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EXTRAORDINARY

PART II—Section 3

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No. 274] NEW DELHI, MONDAY, NOVEMBER 22, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 28th October 1954

S.R.O. 3448.—Whereas the election of Shri Hanuman Prasad Misra and Shri Kanhaiya Lal, as members of the Legislative Assembly of the State of Uttar Pradesh, from the Sidhauli (West) Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Tara Chand, son of Shri Lakshmi Narain, Maheshwari of Village, P.O. and Tahsil Sidhauli, Pargana Bari, District Sitapur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUCKNOW

PRESENT

Sri Raghunandan Saran, (Retired District Judge)—*Chairman*.

Sri M. U. Faruqi, (Retired District Judge)—*Judicial Member*.

Sri A. Sanyal—*Advocate Member*.

ELECTION PETITION No. 25 OF 1953

Petition under Sections 80 and 81 of the Representation of the People Act, 1951 [Sidhauli (West) Constituency of the U.P. Legislative Assembly]

Sri Tara Chand, S/o Sri Lakshmi Narain, Maheshwari of Village, Post Office and Tahsil Sidhauli, Pargana Bari, District Sitapur—*Petitioner*.

Versus

1. Sri Hanuman Prasad Misra, S/o Sri Madho Ram Misra, Brahman of Village Kansa, Post Office and Pargana Mahmudabad, Tahsil Sidhauli, Distt. Sitapur.
2. Sri Prahlad Singh, S/o Sri Kalka Singh, Thakur of village Lalpurwa, hamlet of Wajid Nagar, Post Office and Pargana Mahmudabad, Tahsil Sidhauli, District Sitapur.
3. Sri Lakshmi Chand, S/o Sri Sukkhi Lal, Advocate R/o Thompsonganj, Sitapur, Pargana Khairabad, Post Office and District Sitapur.
4. Sri Madhav Prasad, S/o Sri Behari Lal, Brahman of Village Jhakrawan, Pargana Bari, Tahsil Sidhauli, District Sitapur.

5. Sri Kanahya Lal, S/o Sri Rikkhi, Pasi of Village Gulpalla, Pargana Khairabad, Post Office and Tahsil and District Sitapur.
6. Sri Baijo Ram, S/o Sri Cheddan, Pasi of Village Jataha, Pargana Bari, Tahsil Sidhauil, District Sitapur.
7. Sri Faqire, S/o Sri Tori, Pasi of Village Reori, Post Office and Tahsil Sidhauil, Pargana Bari, District Sitapur—*Respondents*.

JUDGMENT

PER R. SARAN, CHAIRMAN AND M. U. FARUQI, JUDICIAL MEMBER

This is an election petition presented under Section 81 of the Representation of the People Act, 1951, calling in question the bye-election to the Sidhauil (West) Constituency of the Sitapur District for the Legislative Assembly of the Uttar Pradesh held on 1st July 1953. This is a two-member constituency, one of the two seats being reserved for the Scheduled Castes. The petitioner, Sri Tara Chand, was a candidate for the general seat and stood on the Congress ticket, and he belongs to the Valsh community. The Congress candidate for the reserved seat was Sri Baiju Ram, respondent No. 6, belonging to the Pasi community. The respondent No. 1, Sri Hanuman Prasad Misra, who belongs to the Brahmin community, was a candidate for the general seat on the ticket of the Praja Socialist Party and the candidate of this party for the reserved seat was Sri Kanhaiya Lal, respondent No. 5, who belongs to the Pasi community. The other candidates in this election were Sri Prahlad Singh, respondent No. 2, Sri Lakshmi Chand, respondent No. 3, Sri Madhav Prasad, respondent No. 4 and Sri Faqire, respondent No. 7, all of whom were independent candidates who withdrew their candidature within the prescribed period, with the result that the only contestants in the field were the petitioner and the respondents Nos. 1, 5 and 6. The polling took place on 1st July 1953 and the counting of votes took place on 4th and 5th July 1953. The result was declared by the Returning Officer on 5th July 1953; the respondent No. 5 secured 25,381 votes, the respondent No. 1 secured 25,016 votes, the petitioner secured 23,324 votes and the respondent No. 6 secured 22,619 votes, and consequently the respondents Nos. 5 and 1 were declared elected. The result of the election was duly published in the Government Gazette of U.P. after which the respondents Nos. 1 and 5 duly filed their returns of election expenses with the necessary declarations. The present election petition challenging the election was presented on 19th October 1953 within the period of limitation. It may be mentioned that in the general elections of 1952 also the contest in this constituency was between the petitioner and the respondent No. 6 who stood on the Congress ticket and the respondent Nos. 1 and 5 who stood on the ticket of the Socialist Party and in that election the petitioner and the respondent No. 6 were declared elected, but that election was set aside by the Faizabad Election Tribunal on the election petition of the respondent No. 1 and so the bye-election in question came to be held.

2. The petitioner challenges the bye-election on a number of grounds. He alleges in the first place that the election has not been a free election by reason that the corrupt practice of undue influence extensively prevailed at the election and also coercion, intimidation and fraud was exercised as specified in Para. 8 of the petition; his contention, therefore, is that the election is wholly void in accordance with the provisions of Section 100(1) of the Representation of the People Act, 1951 and he has given the particulars of undue influence in list I attached to the petition. He alleges in the second place that the respondents No. 1 and 5 and their agents and workers and supporters with the connivance of the respondents No. 1 and 5 and their agents committed the corrupt practice of bribery, undue influence, hiring and procuring of vehicles for the conveyance of voters to and from the polling stations, removal of ballot papers from one booth to another, obtaining of assistance from persons serving under the Government of India and the Government of the Uttar Pradesh for the furtherance of the prospects of the election of respondents No. 1 and 5, publication of false and defamatory statements in relation to the personal character and conduct of the petitioner and systematic appeal to Muslim voters to vote on the ground of religion and to Brahmin and Kurmi voters to vote on the ground of caste; they also committed the illegal practices of incurring and authorising expense by unauthorised persons and issuing a leaflet Ex. P1, which does not bear on its face the name and address of its printer and publisher; the allegations as regards these practices are contained in sub-paras (a) to (i) of para. 9 of the petition and their particulars are given in lists II to XIII attached to the petition, and he alleges in para. 10 of the petition that the election of the respondents No. 1 and 5 has been procured and induced by these practices and in any case the result of the election has been materially affected by them. He alleges further

that the returns of election expenses and the declarations filed by the respondents No. 1 and 5 are false in material particulars as specified in para. 11 of the petition and list XIV attached to the petition and that this corrupt practice has materially affected the result of the election. Lastly, in para. 12 of his petition he alleges that certain irregularities and breaches of laws and rules relating to election were committed as specified in sub-paras. (I) to (vii) of this para. and in lists XV to XIX attached the petition and they have materially affected the result of the election. His contention is that because of his allegations in paras. 9 to 12 of the petition the election of the respondents No. 1 and 5 is void in accordance with the provisions of Section 100(2) of the Representation of the People Act, 1951. His prayer is that the election in question be declared to be wholly void or in the alternative the election of the respondents Nos. 1 and 5 be declared to be void.

3. The respondents No. 2, 3, 4 and 7 did not put in appearance and the case was contested by the respondents No. 1 and 5 only, who before filing their written statements contended that the allegations in the petition and the particulars contained in the lists attached to the petition were very vague and indefinite. So we examined the petition and its lists in the presence of the parties and by our order dated 25th January 1954 we directed certain portions of the petition and its lists specified in the order to be deleted on the ground of vagueness and indefiniteness and also called upon the petitioner to give further and better particulars in respect of certain of his allegations. He gave these particulars on 12th February 1954, after which the respondents 1 and 5 filed separate written statements. Their defence is almost common and their case is generally one of denial; they say that the allegations in the petition are false and incorrect, that no illegal act was committed at the election by the respondents, that if any such act was committed it was contrary to the orders of the respondents and without their sanction and connivance as they had taken all reasonable means to prevent such acts and that in any case none of the acts complained of had any material effect upon the result of the election.

4. The petition and its lists, as modified by our order dated 25th January 1954 and supplemented by the further and better particulars, and the written statements of the respondents gave rise to the following issues:—

1. Whether the election has not been a free election by reason that the corrupt practice of undue influence extensively prevailed in the form given in para. 8(i) of the petition and list I? If so, its effect?
2. Whether the election of respondents No. 1 and 5 is void on the ground that the corrupt practice of bribery was committed by the respondents No. 1 and 5 and their agents and workers as given in para. 9(a) and list II?
3. Whether the election of respondents No. 1 and 5 is void on the ground that the corrupt practice of undue influence was committed by the respondents No. 1 and 5 and their agents and workers as given in para. 9(b) (I) and list III, 9(b) (II) and list IV, 9(b) (III) and list V, 9(b) (IV) and 9(b) (V) and list VI, 9(b) (VI) and list VII(a), 9(b) (VII) and list VII(b) and 9(b) (VIII) and list VIII?
4. Whether the election of respondents No. 1 and 5 is void on the ground that the corrupt practice of hiring and procuring of vehicles for the conveyance of electors to and from the polling station was committed by the respondents No. 1 and 5, and their agents and workers, the particulars of which are given in para. 9(c) and list IX?
5. Whether the election of respondents No. 1 and 5 is void on the ground that the corrupt practice under Section 123(8) was committed by obtaining and procuring assistance from the Branch Post Master, Bari, serving under the Government of India and other persons serving under the Government of Uttar Pradesh named in list XI for furtherance of the prospects of election of respondents No. 1 and 5, the other details of which are given in further and better particulars submitted by the petitioner?
6. Whether the election of respondents No. 1 and 5 is void on the ground that the corrupt practice mentioned in para. 9(f) and list XII of the petition was committed as alleged?
7. Whether the election of respondents No. 1 and 5 is void on the ground that the corrupt practice of systematic appeal as given in para. 9(g) (I) and list IV and para. 9(g) (II) to Brahmin or Muslim electors or both was committed and that the result of the election was materially affected thereby?

8. Whether the election of respondents No. 1 and 5 is void on the ground that the illegal practices as mentioned in para. 9(h) and list XIII and para. 9(i) of the petition were committed as alleged and that the result of the election was materially affected thereby?
9. Whether the election of respondents No. 1 and 5 has been procured or induced by the corrupt practices mentioned in paragraph 9 and its sub-paragraphs or the result of the election has been materially affected by them? If so, its effect?
10. Whether the returns of election expenses and declarations filed by the respondents No. 1 and 5 are false in material particulars as alleged in para. 11 and list XIV? If so, has it materially affected the result of election?
11. Whether the result of the election has been materially affected by any or all of the irregularities mentioned in paragraphs 12(I) to 12(VII) of the petition?
12. To what relief, if any, is the petitioner entitled and what is the proper order to be made under Sections 98 and 99 of the Act?

FINDINGS

5. *Issue No. 2.*—This issue is about the major corrupt practice of bribery as defined in Section 123(i) of the Representation of the People Act, 1951; the allegations about it are contained in para. 9(a) of the petition and the particulars are given in list II. It is alleged that in three instances money was paid in cash to secure votes and also that electors were entertained on the polling day at the Kamlapur polling station; by our order dated 25th January 1954 we deleted the allegations and particulars about the entertainment of voters on the ground of vagueness and indefiniteness, and on the same ground we deleted the allegations and particulars in respect of one of the three instances of cash payment; thus there remained only two instances of cash payment about which the petitioner adduced evidence, but at the time of arguments his counsel admitted frankly that this evidence is not sufficient or satisfactory to establish any case of bribery. On behalf of the respondents there is absolute denial on this point, and we find this issue against the petitioner.

6. *Issue No. 4.*—This issue is about the major corrupt practice of hiring and procuring of vehicles for the conveyance of electors on the polling day to and from the polling stations; the allegations about it are contained in para. 9(c) of the petition and the particulars are given in list IX. The petitioner adduced some evidence on this subject but at the time of arguments his counsel admitted frankly that in respect of this corrupt practice also the evidence is not at all sufficient or satisfactory. On behalf of the respondents there is absolute denial on this subject, and we find this issue also against the petitioner.

7. *Issue No. 1.*—The allegations on this subject are contained in para. 8 of the petition and it is alleged that the election in question was not a free election at all as the corrupt practice of undue influence extensively prevailed at the election as specified in para. 8(i) and list I and also coercion, intimidation and fraud was exercised as mentioned in para. 8(ii) and (iii). However, no particulars of this coercion, intimidation and fraud were given, and so by our order dated 25th January 1954 we deleted paras. 8(ii) and (iii) on the ground of vagueness and indefiniteness. Thus there remains the case of undue influence only which is said to have been exercised upon the Brahmin and Muslim electors as detailed in para. 8(i) and list I; practically the same allegations are repeated in para. 9(b) (ii) and (iii) and lists IV and V, and it could not be otherwise because the only contestants in the field were the respondents No. 1 and 5 on the Socialist ticket and the petitioner and the respondent No. 6 on the Congress ticket, and no other party or candidate being in the field the undue influence, if any, could have been exercised only by the respondents No. 1 and 5 and their agents, workers and supporters. No separate arguments were addressed to us on this issue and so we shall deal with the case of undue influence under issue No. 3 only.

8. *Issue No. 6.*—This issue is about the publication of false and defamatory statements which is a major corrupt practice as defined in Section 123(5) of the Representation of the People Act, 1951. The allegations about this corrupt practice are contained in para. 9(f) of the petition and the particulars are given in list XII. These statements are contained in three leaflets Ex. P1, P10 and P23; Ex. P1 is in Urdu and is printed on green paper and contains an appeal to the Muslim voters, while Ex. P10 and P23 are in Hindi and printed on white paper

and contain an appeal to the whole electorate. In para. 9(f) it was also alleged that in addition to the distribution of these leaflets these false and defamatory statements were also spread orally, but we have deleted the allegation about the oral circulation on the ground of its vagueness and indefiniteness and so there remains the question of these leaflets only. We may mention that the case of Ex. P10 and P23 stands on a different footing from that of Ex. P1 because in respect of Ex. P10 and P23 the respondents No. 1 and 5 admit their responsibility to a certain extent by having included their costs of publication in their returns of election expenses, whereas in respect of Ex. P1 their case is one of absolute denial and their contention is that this leaflet was not in existence at all in the election days and that it has been fabricated and forged by the petitioner himself after the election only for the purpose of his election petition. We may add that in the preamble of para. 9 of the petition it was stated that this and the other corrupt practices mentioned in this para were committed by the respondents No. 1 and 5 and their agents and workers with the connivance of respondents No. 1 and 5 and their agents; we found the words 'agents and workers' to be rather vague and indefinite and so in our order dated 25th January 1954 we laid down that the phrase 'agents and workers' as we understood it with reference to the lists would not permit of the addition of any new names of workers and agents; in para. 9(f) no names of any agents or workers making the publication were specified, nor were any names specified in list XII, and consequently we ordered the deletion of the words "their agents and workers" from list XII, and the result is that as regards publication we are left only with the allegation that it was by the respondents No. 1 and 5.

9. We shall first take up the leaflets Ex. P10 and P23. Both the leaflets were printed in the Jan Sahitya Press of Lucknow, and Sri Hanuman Prasad Misra respondent No. 1 admits in his statement on oath as R.W. 75 that this Press belongs to the Socialist Party and the weekly 'Sangharsh', an organ of the Socialist Party, is issued from this Press. The constituency in question comprises of most of the area of Sidhauri Tahsil and both leaflets are entitled as an appeal to the public of Tahsil Sidhauri, and bear at the top the symbol of hut which was the election symbol of the Socialist Party which had set up the respondents No. 1 and 5 as its candidates; both contain an appeal for votes for the respondents No. 1 and 5, candidates of the Praja Socialist Party, as against the Congress candidates (petitioner and respondent No. 6) in the bye-election of 1st July 1953. They refer to the success of the Congress candidates in the general elections of 1952 and to their election being set aside on the election petition of the Socialist candidates, and they remind the electorate of the fact that the bye-election was to be held on 1st July 1953 in which the same candidates were the contestants on the same party tickets. Ex. P10 does not bear on it the names of the persons issuing it but Ex. P23 bears the names of six persons as those issuing it; one of these persons is Madho Prasad Misra of Jhakrawan who is the respondent No. 4 in this case and he has come forward to depose for the respondents as R.W. 41; another is Mahabir Prasad Srivastava. Ex. P10 says *inter alia*

"The two Congress M.L.A.'s unseated by the Election Tribunal are being again inflicted upon you. What atrocities were not perpetrated upon the public of the Tahsil during the tenure of office of these M.L.A.'s? Thefts, dacoities and murders increased, the ignorant masses were looted in collusion with the police and innocent persons were falsely implicated and disgraced and now those very persons who looted the public for a year and a half are coming forward as the best well-wishers of the public and are distributing favours in the form of cement, posts and other offices. The perpetrators of atrocities should be defeated by casting votes for the Socialist candidates on 1st July 1953".

Ex. P23, says *inter alia*

"All the public has some experience at least of the atrocities committed in the Tahsil during the last 14 months of the tenure of office of the two Congress M.L.A.'s; there was no restraint upon thefts, dacoities and murders, the Gundas had the upper hand and it was no use talking of the helpless, poor and illiterate persons when the honour of even educated and renowned persons was at stake, and so in the coming bye-election of 1st July 1953 these perpetrators of atrocities should be defeated by the casting of votes in favour of cultured, educated and honest candidates like Sri Hanuman Prasad Misra and Sri Kanhaiya Lal."

10. About the leaflets Ex. P10 and P23 the respondents No. 1 and 5 state in their written statements that they were not issued by the respondents; Ex. P10 was published by the Socialist Party and Ex. P23 by the persons mentioned therein without the permission or knowledge of the respondents; none of the statements contained therein are false, nor were they believed to be false; these statements were the honest opinion of the publishers and did not in any way prejudice the prospects of the petitioner's election; and after the election the respondents came to know of the publication of these leaflets, and as such the expenses incurred on their publication were shown in their returns of election expenses to avoid any illegality.

11. In view of the circumstance that the respondents No. 1 and 5 have practically admitted the fact of the publication of Ex. P10 and Ex. P23 by them by including their charges of publication in their returns of election expenses there is little scope for their contention that the publication of these leaflets was not by them but was by other persons without their permission, knowledge or connivance. Still the petitioner has examined several witnesses to prove that copies of these leaflets were widely distributed in the villages of the constituency; most of these witnesses say no doubt that this distribution was by persons other than the respondents No. 1 and 5, but in the circumstances of the case it must be held that the distribution by these other persons must have been with the knowledge and permission or at least with the connivance of the respondents No. 1 and 5. However, two of the petitioner's witnesses directly connect the respondent No. 1 with the distribution of Ex. P10, and they are P.W. 93 Sita Ram of village Bajhera and P.W. 143 Pratap Bhan Tewari of the same village; they say that a few days before the polling the respondent No. 1 visited village Bajhera in the company of other people and got distributed copies of Ex. P10; Sita Ram says it was 4 or 5 days before the polling and Pratap Bhan Tewari says it was 8 or 10 days before the polling, but we think that both of them refer to the same event and the discrepancy in their statement is not of much consequence. Sita Ram was cross-examined on behalf of the respondents, but in this cross-examination there was no suggestion that Sri Misra respondent No. 1 had not visited Bajhera on that occasion or had not got copies of Ex. P10 distributed, and the suggestion was only that that visit of Sri Misra was on the invitation of the village people and on their request he also gave them at that time a red flag. P.W. 143 Pratap Bhan Tewari was an active worker of Sri Misra respondent No. 1 in this election and was also his polling agent at the Bhurkura polling station and his forms of appointment as polling agent are on the record as Ex. P44 and P31; he says that he is also a distant relation of Sri Misra; Pratap Bhan Tewari was cross-examined on behalf of the respondents but this cross-examination was not directed against his statement about Sri Misra's visit to village Bajhera or his distribution of copies of Ex. P10 on that occasion. In these circumstances there can be no reason to disbelieve Sita Ram or Pratap Bhan Tewari when they say that the respondent No. 1 personally got copies of Ex. P10 distributed in village Bajhera a few days before the polling.

12. Sri Hanuman Prasad Misra respondent No. 1 has come into the witness-box as R.W. 75, but Sri Kanhaiya Lal respondent No. 5 has chosen to keep out of the witnessbox. Sri Misra says that for purposes of their election campaign the whole constituency was divided by the respondents into two circles which may conveniently be referred to as the Mahmudabad circle and the Sidhauri circle; he himself mostly remained busy in the Mahmudabad circle and visited the other circle only when necessary, and this other circle was put in the charge of respondent No. 5 and some workers; later on Sri Misra improved upon this statement by saying that the election work of the Sidhauri circle was mostly in charge of Madho Prasad of Jhakrawan and Munshi Mahabir Prasad Srivastava while the respondent No. 5 was simply helping them; he says that copies of Ex. P10 and P23 were distributed in the villages of Sidhauri side and he came to know of their distribution only after the polling was over; however, he has given no explanation as to why the distribution should have been restricted to only a portion of the constituency when the leaflets were meant for the whole of the constituency; in fact village Bajhera which P.W.'s 93 and 143 mention in connection with the distribution of copies of Ex. P10 by the respondent No. 1 is a village of the Mahmudabad side and not of the Sidhauri side, and we must believe the petitioner's case that the distribution was throughout the constituency and that it was at the instance of the respondents No. 1 and 5 themselves. Madho Prasad of Jhakrawan R.W. 41 admits having issued the leaflet Ex. P23, and the respondent No. 5 has not come into the witness-box to say that the leaflets Ex. P10 and P23 were published without his (respondent No. 5's) knowledge or permission or connivance; according to the respondent No. 1, Madho Prasad of Jhakrawan and Munshi Mahabir Prasad Srivastava, signatories of Ex. P23, were working with the respondent No. 5 throughout the election period in the Sidhauri

circle and also copies of Ex. P10 and P23 were distributed in that circle and in these circumstances it was for the respondent No. 5 to have come into the witness-box to deny his connection with these leaflets if he had really no concern with them, although he showed their charges in his return of election expenses.

13. According to the respondents themselves the leaflet Ex. P10 was published by the Socialist Party and the leaflet Ex. P23 by Madho Prasad of Jhakrawan and Munshi Mahabir Prasad Srivastava etc., over whose names it is printed, but in our opinion the Socialist Party and the signatories of Ex. P23 must be held to be the agents of the respondents No. 1 and 5 and these respondents must be held to be bound by the acts of these agents in respect of the publication of Ex. P10 and P23. The respondents were candidates in this election on the ticket of the Socialist Party which was also doing the election propaganda on their behalf and in their support, and as such the Socialist Party must be held to be their agent within the definition of "agent" as given in Section 79(a) of the Representation of the People Act; the same is the case with regard to Sri Madho Prasad of Jhakrawan and Munshi Mahabir Prasad Srivastava who according to the statement on oath of respondent No. 1 were active workers of the respondents in the election and were in fact in charge of their election campaign in half of the constituency. These publishers of Ex. P10 and P23 must be held to have acted as the agents of the respondents No. 1 and 5 in connection with the election with the knowledge and consent of these respondents, and so no knowledge or consent or connivance of the respondents No. 1 and 5 was necessary to be proved for the publication of these leaflets by these agents to render it a corrupt practice under Section 123(5). In their written statements the respondents say generally that if any illegal act was committed at the election it was contrary to the orders of the respondents and without their sanction or connivance and that the respondents took all reasonable means for the prevention of any corrupt or illegal practice by any workers and agents, and their only evidence on this point is the solitary statement of the respondent No. 1, who says that on or about 1st June 1953 he called a meeting of his workers and gave them verbal directions about the election work including the direction that nothing improper should be done in the election campaign, but in our opinion this meagre evidence is not sufficient to bring the case of the respondents under Section 100(3) of the Act. We find, therefore, that the publication of Ex. P10 and P23 was by the respondents No. 1 and 5 as is the case of the petitioner or that it was at least by the agents of these respondents as is the case of the respondents themselves, and this disposes of the question of publication.

14. We have now to consider the other ingredients of the corrupt practice laid down in Section 123(5). A reading of the relevant portions of Ex. P10 and P23 reproduced above will show that they are statements of fact and not an expression of mere opinion as is the contention of the respondents. The petitioner has stated on oath as P.W. 147 that the statements about him in Ex. P10 and Ex. P23 are totally false and he has not been cross-examined at all on this point, there is no evidence in rebuttal either, and even the respondent No. 1 R.W. 75 or Madho Prasad R.W. 41 have not attempted to state in their depositions that these statements are not false, and in these circumstances we hold the statements in question to be false. In these leaflets the petitioner and the respondent No. 6 were described as persons looting and oppressing the public and perpetrating atrocities against the ignorant masses and the petitioner has proved these statements as regards himself to be totally false, and consequently we may safely infer that the publishers of these statements believed them to be false and did not believe them to be true, and it was for the respondents themselves to show if there were any circumstances from which the publishers were led to believe that the statements in question were true and not false; the respondents have adduced no evidence at all on this subject, and even the respondent No. 1 and his witness Madho Prasad of Jhakrawan have kept silent on this point, and we have no explanation from the respondents how the publishers could have believed these statements to be true and not false, if they are in fact false. Consequently, we hold that not only are the statements contained in the leaflets Ex. P10 and P23 false, but also the publishers of these statements believed them to be false and did not believe them to be true. The statements characterising the petitioner and respondent No. 6 as looters and oppressors and perpetrators of atrocities must be deemed to be in relation to their personal character and not in relation to their public, political or official conduct and we hold accordingly. These statements are of a very defamatory and damaging nature and as such there can be no doubt at all in the fact that they were reasonably calculated to prejudice the prospects of the petitioner's election and we are unable to accept the case of the respondents to the contrary. We hold, therefore, that the major corrupt practice defined in Section 125(5) of the Representation of the People Act, 1951 was committed in this election by the publication of the leaflets Ex. P10

and P23 and that the election of the respondents No. 1 and 5 is void on this ground in accordance with the provisions of Section 100(2)(b) of the Act, as this corrupt practice was committed by the respondents No. 1 and 5 or at least by their agents and the provisions of Section 100(3) do not help the respondents. This disposes of the leaflets Ex. P10 and P23.

15. There remains now the Urdu leaflet Ex. P1 printed on the green paper and we may frankly state at once that we are not satisfied about the fact of its publication. It bears the hut symbol at the top and its title is that the Muslims should beware as a Muslim boy had been made the victim of the Congress misdeeds; it is over the names of Dr. Syed Riasat, Mirza Hadi Husain, Assistant Mazdoor Committee Mahmudabad, and Comrade Amanat Ullah, Assistant Mazdoor Committee, Mahmudabad and says that on the preceding evening the Congressite gundas of Tara Chand killed a Muslim boy on the public road in broad day light at Sidhau, although this Tara Chand claims to be a Congressite and a protector of the Muslims; it reminds the Muslim voters that the polling would take place on third day and exhorts them on oath of the Holy God to cast their votes after discriminating between the foes and friends of Islam. According to the case and evidence of the petitioner copies of this leaflet were extensively distributed in the constituency during the two days before polling and the three persons over whose names this leaflet was issued were the active workers of the Socialist Party and the respondents No. 1 and 5 in the election. According to the common case of the parties there was a minor clash between the Congress workers and the Socialist workers at Sidhau in the evening of 28th June, 1953 and in this clash the workers of both parties sustained some injuries, one of the injured persons being Ishrat, a Muslim boy of Mahmudabad aged 15 or 16 who was one of the Socialist workers, but his injuries were very ordinary and not at all serious; it may be mentioned that Sidhau and Mahmudabad are the two most important places in this constituency, Sidhau being the headquarters of the Tahsil and Mahmudabad being the headquarters of the Mahmudabad Estate and possessing a very considerable Muslim population; the two places are at a distance of about 20 miles from each other and are connected by a pukka road. The case of the petitioner is that the respondents and their agents and workers exploited the Sidhau incident for the purposes of the election and on the night of 28th/29th June, 1953 a false announcement was made at Sidhau that Ishrat had died as a result of his injuries; the false news of Ishrat's death was also spread by the Social workers at Mahmudabad on 29th June, 1953 and they got the Mahmudabad market closed by way of 'hartal' and took out a fictitious funeral procession of Ishrat in the Mahmudabad market shouting slogans against the Congress and the petitioner; Ishrat never died but is still alive, and according to the petitioner all this false propaganda was done by the respondents and their workers and agents to mislead and deceive the Muslims with the object of weaning them away wrongfully from the Congress and the petitioner, and the leaflets Ex. P1 was also published and its copies distributed widely in the constituency in furtherance of this false propaganda. According to the respondents there was no such propaganda at all and no publication or circulation of Ex. P1; their case is that Ex. P1 was not in existence at all in the election days and they came across it for the first time when the present election petition along with this leaflet was published in the Government Gazette of the U.P. in December, 1953; according to them this leaflet is the creation of the petitioner himself who has forged and fabricated it for the purposes of his election petition.

16. In his petition the petitioner alleged that this leaflet was published and circulated by the respondents No. 1 and 5 and their agents and workers, but he did not mention the names of any such agents or workers in para 9 (f) of the petition or in list XII, and so by our order dated 25th January, 1954 we have confined him to the case that the publication and circulation was by the respondents No. 1 and 5 only; but by his evidence the petitioner has failed to make out that the respondents No. 1 and 5 had any connection with the publication or circulation of Ex. P1 and his evidence only is that copies of Ex. P1 were distributed in the villages of the constituency by certain persons who are alleged to have been the agents and workers of the respondents No. 1 and 5 in the election but whose names were not disclosed at all in para 9(f) of the petition or list XII. The leaflet does not bear the name of the Press where it was printed and the petitioner has not been able to name this Press or to adduce any evidence about its printing. No doubt Dr. Riasat, Mirza Hadi Hussain and Amanat Ullah (in fact Amanat Ali) whose names appear at the foot of this leaflet were Socialist workers in this election, but the petitioner has failed to prove by any direct evidence that they or any of them were in any way connected with the printing or publication or circulation of this leaflet. According to the petitioner's evidence

copies or Ex. P1 were distributed mostly in the villages with a considerable Muslim population, but the respondent No. 1 has examined several witnesses of these villages to say that copies of this leaflet were never distributed in their villages and there can be no good reason to believe the petitioner's witnesses in preference to the respondent's witnesses on this point. Also Dr. Riasat Ali, Mirza Hadi Hussain and Amanat Ali have come forward as R.W.'s No. 3, 1 and 2 respectively and they deny having issued any such leaflet and state that they came to know of it only after its publication in the Govt. Gazette of U.P. along with the election petition; the respondent No. 1 also states on oath that he came to know of it only on its publication in the Govt. Gazette; the petitioner too admits in his statement on oath that before the polling he never came across any copy of Ex. P1 or learnt of its distribution, although he adds that two days after the polling he came to know of the distribution of Ex. P1 and that three days after the polling he came across a copy of it for the first time, and in these circumstances there may after all be some truth in the respondent's contention that the leaflets Ex. P1 was not in existence at all in the election days.

17. There is some intrinsic evidence also in Ex. P1 to show that it could not have emanated from any Socialist workers; in this leaflet Hadi Hussain and Amanat Ullah are described as Assistants of the Mazdoor Committee of Mahmudabad, but according to the respondent's evidence there has never been any such Committee and the petitioner either has not proved that there was ever any such Committee; there was certainly a Mandal Committee of the Praja Socialist Party at Mahmudabad and Dr. Riasat, Mirza Hadi Hussain and Amanat Ali were office bearers of this committee as proved by the respondent's evidence as well as by the petitioner's documents Ex. P45. Now if Ex. P1 had been issued by any Socialist worker Mirza Hadi Hussain and Amanat Ullah would not have been described in it as members of any Mazdoor Committee but would have been described as members of the Mandal Committee, and their description in Ex. P1 as members of the Mazdoor Committee shows that this leaflet is the product of some less informed persons; in the body of Ex. P45 the Mandal Committee was named in full as the Mandal Committee, but at its foot in the description of Mirza Hadi Hasan etc. it was named in short as M. Committee, and it appears that the authors of Ex. P1, who did not know enough about the constitution of the P. S. P., supposed wrongly that this M. Committee signified the Mazdoor Committee and consequently in Ex. P1 they gave the description of Mirza Hadi Hasan and Amanat Ullah as Assistants of the Mazdoor Committee. The respondents either have not named the Press where Ex. P1 may have been printed and nor have they produced any evidence to show how and in what circumstances and by whom this leaflet was printed. However, it was for the petitioner himself to prove by satisfactory evidence that the respondents and their men were responsible for the publication and circulation of Ex. P1 and this he has failed to do, and consequently we find that the election of the respondents No. 1 and 5 cannot be held to be void on the ground of this leaflet. This disposes of the issue No. 6.

18. *Issue No. 8.*—The allegations on this subject are contained in para. 9(h) and list XIII and para. 9(i) of the petition. In para. 9(h) it is alleged that the expenses specified in list XIII were incurred by persons other than the respondents No. 1 and 5 or their agents for the purposes of procuring the election of these respondents without being authorised in writing to do so by the respondents and thereby the illegal practice defined in Section 125(1) of the Act was committed. These expenses consists of 11 items, the first ten of which are alleged to have been incurred by Ram Autar Munim and Ramesh Chandra Tripathi etc. and are admittedly included in the return of the election expenses of the respondent No. 1; the 11th item is the expenditure of publishing of Ex. P1 alleged to have been incurred by the persons over whose names this leaflet appears. The contention of the respondent No. 1 is that the first ten items in question were incurred by himself and by nobody else and they are duly shown in his return of election expenses; no doubt in the vouchers in support of some of these items the name of Ram Autar Munim or Ramesh Chandra Tripathi appears as the person incurring the expenditure, but the contention of the respondent No. 1 is that if they incurred any such expenses they were re-imbursed by him shortly afterwards and so the expenditure was really by the respondent No. 1 himself through the agency of these persons, and as this expenditure was duly shown by him in his return of election expenses no question of its having been incurred by any person other than the respondent No. 1 arises; certainly Ram Autar Munim or Ramesh Chandra Tripathi were not authorised in writing by the respondent No. 1 to incur any expenses on his behalf, but in the circumstances of the case we have to accept the contention of the respondent No. 1 that the expenditure was really by himself and not by these persons.

19. As regards the 11th item, viz., the cost of publication of Ex. P1, the contention of the respondents is that this expenditure was not at all for the purpose of promoting or procuring their election as this leaflet was not even in existence in the election days and must have been forged and fabricated by the petitioner himself after the election for the purposes of the election petition. In view of our finding about this leaflet under issue No. 6 we accept this contention of the respondent and hold that no illegal practice as defined in Section 125(1) of the Representation of the People Act, 1951 has been committed.

20. As already stated this leaflet Ex. P1 is without the name and address of its printer and so in para. 9(1) of the petition the petitioner contends that the illegal practice mentioned in Section 125(3) of the Act has been committed, but for the purposes of this case all this is immaterial because the petitioner has failed to prove the liability of the respondents or their workers or any body else for the printing of issuing of this leaflet, and the respondents have also not proved by any evidence the liability of the petitioner or his workers or any body else for the printing of this leaflet, and consequently we are unable to charge any body with this illegal practice. We find that this corrupt practice has not been committed by the respondents or any body else on their behalf.

21. *Issue No. 5.*—This issue concerns the corrupt practice of obtaining assistance from persons serving under the Govt. of India and the Govt. of U.P. as defined in Section 123(8) of the Representation of the People Act, 1951. The allegations about it are contained in para. 9(e) of the petition and the particulars are given in list XI as supplemented by further and better particulars. This assistance is said to have been obtained from a Branch Post Master (Sri Ganga Shankar, also called Dr. Ganga Shankar), an Amin (Ram Lakhan Singh) and three Mukhyas or village headmen (Debi Prasad, Ajodhya Prasad and Brij Mohan). However, the case about Ajodhya Prasad was not pressed at the time of arguments and so we are left with the other four cases only.

22. We shall take up the case of Ram Lakhan Singh Amin first. This Ram Lakhan Singh is R.W. 35 in this case, and according to the common case of the parties he was the Kuramrin of Tacavi collections in the Sidhauri Tahsil of the Sitapur district from 1st June 1953 to 15th July 1953, and as such he was a person serving under the Government of the Uttar Pradesh within the meaning of Section 123(8) of the Act; his circle comprised of villages Mathura, Desi Laokia and Janki Nagar not included in this constituency but he is a resident of village Parewajal in this constituency, the distance between Parewajal and Sidhauri being about 8 miles, and his circle being about 30 miles away from Sidhauri and Parewajal. In the list XI it was alleged about him that he rendered assistance from 1st June 1953 to 1 July 1953 at Parewajal, Nawagaon and Saraura pollings. In the further and better particulars the names of some other villages were also added and it was stated that he canvassed for the respondents at all these villages, that he attended an election meeting of the respondents No. 1 and 5 at village Manua Bazar on 31st May 1953 and shouted slogans there and that he issued a leaflet over his name and other names announcing election meetings in support of the respondents No. 1 and 5 at Parewajal and four other villages from 17 to 21st June 1953; this leaflet is Ex. P33 and we also find a mention of it as item No. (c) in list XIV, appended to para. 11 of the petition where it is alleged that the returns of election expenses filed by the respondents are false in material particulars in as much as the item of list XI have not been included in the returns. The case of the respondents is one of denial in respect of Ram Lakhan Singh and the leaflet Ex. P33.

23. We have considered the evidence of the parties on this subject and we are satisfied that Ram Lakhan Singh canvassed for the respondents and also issued the leaflet Ex. P33 over his name and other names announcing five election meetings to be held in their support at Parewajal and other villages from 17th to 21st June 1953. Obviously the alleged election meeting at Manua Bazar was held on 31st May 1953 when Ram Lakhan Singh was not in service and we must ignore it; also we must ignore the evidence of canvassing at villages added by the further and better particulars and must confine ourselves to the evidence of canvassing at Parewajal, Nawagaon and Saraura and to the evidence about Ex. P33. The petitioner's witnesses about the canvassing at Saraura, two miles away from Parewajal, are Babu Ram P.W. 50, Swami Dayal P.W. 52 and Chandi P.W. 106 and the witness about the canvassing at Parewajal is Ahibaran Singh P.W. 94 who is a grand-uncle of Ram Lakhan Singh, while there is no evidence of any canvassing at Nawagaon. No good reason has been shown as to why we should disbelieve Babu Ram, Swami Dayal, Chandi or Ahibaran Singh and we believe all the four of them. As against this evidence we have Ram Lakhan Singh R.W. 35 himself who says that he did not work at all in this election and

Sri Hanuman Prasad Misra respondent No. 1, R.W. 75, who says that he did not even know Ram Lakhan Singh before his name came to be mentioned in this case, and in the face of the petitioner's evidence we find ourselves unable to believe Ram Lakhan Singh or Sri Misra. On behalf of the respondents it is contended that throughout the month of June 1953 Ram Lakhan Singh was residing in his circle outside the constituency and as such it was impossible for him to have done any canvassing in this election; but admittedly he has got a bicycle and the petitioner's contention is that it was not at all difficult for him to visit the villages of this constituency on his bicycle for canvassing; admittedly he came thrice to Sidhauri in June 1953 to pay into the Tahsil Sub-Treasury the Govt. money collected by him in his circle and the case of the petitioner is that he particularly utilized each of these three occasions to visit Parewajal and the neighbouring villages for canvassing; on the first of these occasions he had to remain at Sidhauri from 8 to 10th June 1953 and the case of the petitioner is that he did not pass all this time at Sidhauri but spent some of this time at Parewajal and the neighbouring villages also and did canvassing; the dates of his other two visits to Sidhauri are 16th June 1953 and 25th June 1953, and we have no hesitation in accepting the petitioner's case that Ram Lakhan Singh utilized these three occasions to visit Parewajal and its neighbouring villages for canvassing for the respondents. The Parewajal meeting in support of the respondents was scheduled for 17th June 1953, and the evidence of the petitioner is that Ram Lakhan Singh attended this meeting which was held at about 2 p.m.; on behalf of the respondents it is vehemently contended that Ram Lakhan Singh could not have attended any such meeting as on 17th June 1953 he was in his circle only where he made one realization on that date as proved by his book of counterfoils of receipts Ex. R.9; however, there is no evidence at all as to the hour at which he made this realization, and in any case after his attendance at the Sidhauri Tahsil on 16th June 1953 it was quite practicable for him to attend the Parewajal meeting at 2 p.m. on 17th June 1953 and then to return to his circle on his bicycle and to make the realization there some time in the evening that very day.

24. Ex. P33 is a Hindi leaflet printed at the Vishwa Printing Press of Lucknow. It mentions 18 names as the persons issuing it and the first name is that of Ram Lakhan Singh of Parewa; three other names are Harnath Dikshit of Saraura, Mool Chand Awasthi of Ahewa and Surendra Singh of Jaipalpur. It announces five election meetings of the P.S.P. viz., the first at Parewa Bazar on 17th June 1953, the second at Kunwarpur Bazar on 18th July 1953, the third at Mau on 19th June 1953, the fourth at Nawagaon on 20th June 1953 and the fifth at Saraura on 21st June 1953. It mentions the names of about a dozen persons as the speakers at these meetings; all these persons are important Socialist leaders and some of them are even of all U.P. importance, and the respondents No. 1 and 5 are also included among them, and according to the petitioner all these meetings were duly held and the Kunwarpur meeting was attended and addressed by the respondent No. 1 also, as stated by Bhawani Din P.W. 129 and Mathura P.W. 130. Another person named in Ex. P33 as a speaker at these meetings is Madho Prasad R.W. 41, and Bhawani Din P.W. 129 says that the Kunwarpur meeting was addressed by Madho Prasad also; Bhawani Din and Mathura P.W.'s depose also about the distribution of copies of the leaflet announcing these meetings by Socialist workers, and Bhawani Din says that this leaflet was Ex. P33, copies of which were distributed by Surendra Singh of Jaipalpur in the Kunwarpur market; as already mentioned the name of this Surendra Singh appears also at the foot of the leaflet as one of the 18 persons issuing it, and he has come forward as R.W. 36.

25. The petitioner has examined the proprietor of the Vishwa Printing Press, Harish Chandra Pandey, as P.W. 134 who deposes that the leaflet Ex. P33 was printed in his press, but adds that there are no papers in existence to show as who placed the order for its printing or who paid the printing charges and even the draft of this leaflet has been weeded out, and he himself does not remember who came to have it printed or to pay the printing charges; and so the deposition of P.W. 134 does not help the petitioner beyond proving that the leaflet Ex. P33 is a genuine document which was duly printed for the election purposes. Further, the petitioner has examined Mool Chand Awasthi of Ahewa and Harnath Dikshit of Saraura as P.W.'s 105 and 144, whose names also appear on the leaflet Ex. P33 as the persons issuing it, and they say that some twenty days before the polling Ram Lakhan Singh and Chhatrapal Singh, Socialist workers, obtained their signatures on a paper of the Socialist Party and the implication is that this paper was the draft of Ex. P33; Mool Chand and Harnath say that they themselves were Socialist workers in this election; Mool Chand does not give any description of this Ram Lakhan Singh except that he was a Socialist worker, but Harnath Dikshit says that he was of Parewa; according to Mool Chand the paper on which his signatures were obtained was in Hindi manuscript or type, but

according to Harnath this paper was blank; Mool Chand adds that Ram Lakhan Singh said that he himself had signed it already; he says further that this paper was got printed subsequently and Ram Lakhan Singh and Chhatrapal Singh Socialist workers gave him 100 copies of it for distribution and that Ex. P33 is that leaflet in print; Ram Lakhan Singh is also said to have read out that paper to Mool Chand before obtaining his signatures and there can be no doubt that this Ram Lakhan Singh was the same as R.W. 35 and the paper on which he obtained the signatures of P.W. 105 and P.W. 144 was the original draft of Ex. P33. Harnath says no doubt that the paper was blank when he signed it but it may be that his memory is deceiving him on this point; he says also that 4 or 5 days after his signing the paper Chhatrapal Singh gave him 30 or 35 printed copies of Ex. P33 for distribution; he says further that he attended the Saraura Kalan meeting of 21st June 1953. Although Mool Chand does not give any description of this Ram Lakhan Singh, yet in cross-examination he has been asked the distance between Parewajal and Ahewa and he has given it as 2 miles, and this shows that according to the respondents also this Ram Lakhan Singh could be no other than the one of Parewajal. It may be added that Ahibaran Singh P.W. 94 says that there is no other Thakur Ram Lakhan Singh at Parewajal except the one who was the Amin in the election days, and from all this evidence we are satisfied that this Ram Lakhan Singh was really one of the persons who issued the leaflet Ex. P33 announcing the election meetings of the respondents No. 1 and 5 which were to be held from 17th to 21st June 1953.

26. As against this evidence we have the testimony of this Ram Lakhan Singh R.W. 35, who denies having worked for the Socialist Party in the election and having issued the leaflet Ex. P33, the testimony of Surendra Singh of Jaipalpur R.W. 36, who admits that Ex. P33 contains his name also as one of the persons issuing it but adds that he never issued any such leaflet, and the testimony of Sri Hanuman Prasad respondent No. 1 who as R.W. 75 says that he did not know Ram Lakhan Singh before his name came to be mentioned in this case and that he came to know of Ex. P33 only on the day he (respondent No. 1) was questioned about it in his deposition *viz.* on 21st July 1954 Madho Prasad and Ajaypal Singh mentioned as the speakers in Ex. P33 have come forward as R.W.'s 41 and 38 but they have chosen to state nothing about Ex. P33 or the meetings announced by it. In face of the petitioner's evidence detailed above Ram Lakhan Singh R.W. 35 cannot be believed when he says that he did not canvass for the respondents No. 1 and 5 and did not issue the leaflet Ex. P33. We do not believe either Surendra Singh of Jaipalpur R.W. 36 when he says that he did not issue Ex. P33; according to the petitioner's evidence he was an active worker of the respondents No. 1 and 5 in the election, and he himself admits that he has been an important member of the Socialist Party and that he was appointed as a polling agent of the respondent No. 1 in this election, although he adds that he did not actually work as a polling agent as two days before the date of polling he was informed that his services would not be required as a polling agent; and there is no reason why he should not have worked for the respondents No. 1 and 5 in this election and why he should not have issued the leaflet Ex. P33, when it actually includes his name; he does not say that the leaflet Ex. P33 was not issued, and his statement only is that he does not know if any such leaflet was issued. The respondents do not challenge the genuineness of Ex. P33 and their case is one of ignorance only in respect of this leaflet; however, they do not explain how this leaflet came into existence if they themselves did not get it issued and who this Ram Lakhan Singh named in this leaflet is if he is not Ram Lakhan Singh R.W. 35. The respondent No. 5 has not come into the witness-box to say that he did not know of Ex. P33 in the election days. Respondent No. 1 says no doubt that the leaflet Ex. P33 was not got printed by him nor was it distributed in the villages of the constituency, but he adds also that he came to know of this leaflet on 21st July 1954 only when he made his statement on oath before the Tribunal. He cannot be believed when he says that he came to know of this leaflet on 21st July 1954 only and we think that he is not speaking the truth on this point as the petitioner made a mention of this leaflet in list XI attached to his petition itself; further, he made a mention of it on 12th February 1954 when giving further and better particulars about Ram Lakhan Singh also this leaflet was put to the petitioner's witnesses during the recording of the petitioner's evidence, after which Ram Lakhan Singh R.W. 35 made his statement on oath on 8th July 1954 denying this leaflet, and the same day this leaflet was specifically put to Surendra Singh R.W. 36 in cross-examination and yet Sri Hanuman Prasad Misra has the temerity to swear that he came to know of this leaflet on 21st July 1954 only and did not know of it earlier. We find, therefore, that the leaflet Ex. P33 was issued by Ram Lakhan Singh R.W. 35 along with others. There can be no doubt in the fact that Ram Lakhan Singh issued this leaflet in June 1953 when he was the Amin and he could not have issued it earlier, as according to the petitioner's evidence the signatures of Mool Chand and Harnath Dixit were obtained on the

draft some 20 days before the polling and not earlier, which means that the leaflet was issued about 10th June 1953 which is probable also as the meetings were scheduled from 17th June 1953 only.

27. On behalf of the petitioner there is no direct evidence that respondents No. 1 and 5 or any of them approached Ram Lakhan Singh for obtaining his assistance to canvass for them or to issue the leaflet Ex. P33 but the circumstances of the case do lead to such an inference. Ram Lakhan Singh canvassed for the respondents No. 1 and 5, and if it was not on the request of the respondents No. 1 and 5 it was for these respondents to show in what circumstances he came to canvass for them; instead of offering any explanation on this subject the respondent No. 5 has kept silent altogether, while the respondent No. 1 has attempted to prove that Ram Lakhan Singh did no canvassing at all. Also the leaflet Ex. P33 was issued to announce five election meetings in support of the respondents No. 1 and 5 and to invite the public to attend these meetings, and in the list of speakers given in this leaflet the names of the respondents No. 1 and 5 and their important workers like Madho Prasad of Jhakra-wan, Munshi Mahabir Prasad Srivastava and Ajaypal Singh were also included and it is difficult to believe that this leaflet was issued not at the instance of the respondents but even without their knowledge and consent; if this leaflet was not issued at the instance of the respondents No. 1 and 5, it was again for these respondents to point out the circumstances under which it came to be issued, but instead of giving any such explanation the respondent No. 5 has thought fit to keep silent and the respondent No. 1 has thought fit to state falsely that he came to know of this leaflet on 21st July 1954 only. We find, therefore, that respondents No. 1 and 5 obtained and procured in this election the assistance of Ram Lakhan Singh who was then serving under the Government of the Uttar Pradesh and that this assistance, being of the nature of canvassing for votes and issuing the leaflet Ex. P33 announcing their election meetings, was for the furtherance of the prospects of their election. As such corrupt practice defined in Section 123(8) of the Act was committed by the respondents No. 1 and 5 and their election is, therefore, void under the provisions of Section 100(2)(b) of the Act, while Section 100(3) of the Act is not applicable at all; we find accordingly.

28. Next we take up the case of Debi Prasad and Brij Mohan, who according to the petitioner are Mukhyas or village headmen serving under the Government of the Uttar Pradesh and whose assistance is alleged to have been obtained by the respondents No. 1 and 5 for the furtherance of the prospects of their election. The case of the respondents as regards these persons is that they are not village Mukhyas, that Mukhyas are not village headmen serving under the Government of the Uttar Pradesh within the meaning of Section 123(8) of the Representation of the People Act, 1951 and that in any case these persons did not work in the election and did nothing in furtherance of the prospects of the election of these respondents. We shall first consider if these persons worked in the election and did anything in furtherance of the prospects of the election of the respondents. In list XI it was alleged about Debi Prasad that he gave his assistance at Kamlapur and Hamirpur polling from 1st June, 1953 to 1st July, 1953 and Kamlapur and Hamirpur polling may be taken to mean the villages for which Kamlapur and Hamirpur were the polling stations; in the further and better particulars he added Saraura Kalan polling also as the field of activity of Debi Prasad, but he had no right to make this addition and we may ignore the addition; in the further and better particulars he specified that the assistance rendered by Debi Prasad was of the nature of canvassing for votes and working as a polling agent. This Debi Prasad is said to be a resident of village Kamlapur and to be the Mukhya of village Daudpur. Now Mohammad Bahadur P.W. 5 of village Saraura Kalan says that in this election the Mukhya of Daudpur worked for the Socialist Party at Saraura Kalan; also Hemnath P.W. 7 of a hamlet of Saraura Kalan says that Debi Prasad Mukhya of Daudpur canvassed for the Socialist Party at Saraura Kalan and on the polling day this Debi Prasad accompanied the voters of Daudpur to the Saraura Kalan polling station; Chhiddu P.W. 16 is of village Daudpur, for which the polling station was Saraura Kalan, and he says that this Debi Prasad canvassed him in his village Daudpur and on the polling day he also took him to the Saraura Kalan polling station; however, as already stated Saraura Kalan polling station or its villages were not mentioned at all in list XI as the field of activity of Debi Prasad and so the testimony of P.W.'s 5, 7 and 16 must be discarded altogether. The only other evidence on behalf of the petitioner for the working of Debi Prasad is the testimony of Brij Mohan Singh P.W. 35, who is of village Ludhauri, for which the polling station was Kamlapur, and who says that Debi Prasad worked for the Socialist Party in this election at his village Ludhauri; however, Brij Mohan Singh gives

no description of Debi Prasad to identify him as Debi Prasad Mukhya in question, and even if Debi Prasad meant by Brij Mohan Singh is Debi Prasad Mukhya in question then the solitary testimony of Brij Mohan Singh would be quite insufficient to prove that this Debi Prasad worked in the election or did any thing for the furtherance of the prospects of the election of the respondents. Out of the respondents' witnesses Dujal of Daudpur R.W. 61 has stated that this Debi Prasad never worked for the Socialist Party at village Daudpur in the election and that he only told the residents of Daudpur to vote for any candidates they liked; he adds that Debi Prasad told him once that if the residents of Daudpur voted for the Socialist Party it would be beneficial to them as they would be exempted from paying the grazing dues, but this would hardly mean that Debi Prasad gave any assistance in furtherance of the prospects of the election of the respondents and we have also to remember that Dujai's village Daudpur was not mentioned in list XI as the field of activity of Debi Prasad. Sri Hanuman Prasad Misra respondent No. 1 has stated that this Debi Prasad did not work for him at all.

29. Brij Mohan Singh is said to be the Mukhya of Paharapur and in list XI his field of activity is mentioned as villages Gangela and Paharapur; but he is also said to be a member of the Panchayati Adalat of Gangela and as such his field of activity in list XVI(a) at serial No. 43 is given as villages Gangela, Banigawan and Chandpur Behati, and no reason has been shown to us as to why there should have been this conflict in the two lists as regards the field of activity of this person. Gur Prasad P.W. 85 says that this Brij Mohan Singh or Birja Mukhya asked him at Gangela to vote for the Socialist Party and that on the polling day he was also present at Gangela polling station on behalf of the Socialist Party, but does not say what he was doing at the polling station. The only other witness of the petitioner on this point is Shankar Singh of Piprichand, P.W. 87, whose polling station was Gangela; he says that Brij Mohan Singh did canvassing for the Socialist Party in village Piprichand and on the polling day he was present at the Gangela polling station and was arranging the voters in the queue. Now village Pipri Chand is not mentioned at all in list XI or list XVI(a) has the field of activity of Brij Mohan Singh, and we do not think that the mere presence of Brij Mohan Singh at the polling station on the polling day or his arranging the voters in the queue would mean any assistance in furtherance of the prospect of the respondents' election; we are, therefore, left with the solitary statement of Gur Prasad P.W. 85 that Brij Mohan Singh canvassed him at Gangela and we do not think that on this meagre evidence we should hold that Brij Mohan Singh took any part in the election or did anything in furtherance of the prospects of the respondents in this election, although we are conscious of the fact that on behalf of the respondents there is no rebuttal of the petitioner's evidence. We find, therefore, that it has not been proved that Debi Prasad or Brij Mohan Singh rendered any assistance in furtherance of the prospects of the election of the respondents No. 1 and 5, and in view of this finding of ours it is not necessary for us to determine whether these persons are village Mukhyas or not and whether the Mukhyas in U.P. are village headmen or not serving under the Government of the State within the meaning of Section 123(8) of the Act.

30. Lastly, there is Sri Ganga Shankar about whom the allegation in paragraph 9(e) of the petition is that the respondents No. 1 and 5 obtained and procured assistance from Ganga Shankar Extra-Departmental Post Master of village Bari in furtherance of the prospects of their election in list XI forming part of the petition it is stated that Ganga Shankar of Bari assisted respondents No. 1 and 5 in their election from June 1 to July 1, 1953 in Bari (Polling) station. While considering contents of the petition and of the lists at the initial stage of the proceedings the Tribunal found, by order dated January 25, 1954, the contents of paragraph 9(c) and list XI as not vague and indefinite and so it ordered retention thereof. It, however, called for further and better particulars in respect of dates, nature of assistance and official designation of Ganga Shankar. In the further and better particulars supplied by the petitioner it was stated that Ganga Shankar worked as polling agent of the respondent No. 1 on July 1, 1953 at the polling station of Bari and that he canvassed support for respondents No. 1 and 5 at the post office from June 1 to July 1, 1953. It was further stated that he canvassed for the respondents No. 1 and 5 in villages Ganipur, and Qazikola. It may be noted that these villages were not mentioned in the list XI of the petition. It was also alleged that the meetings of the Praja Socialist Party used to be held at the house of Ganga Shankar and that he attended and spoke at the propaganda meetings of the Praja Socialist Party on June 24 and 29, 1953. The respondents denied all these allegations.

31. At the trial several witnesses were produced from the side of the petitioner in support of some of the allegations made in the petition. There was no rebuttal from the side of the respondents. The witnesses were: Manzoorul Hasan of Bari (P.W. 21), Fida Husain of Bari (P.W. 24), Mohd. Shafi of Bari (P.W. 54), Saghir Khan of Garhia Hasanpur (P.W. 72), Janoo of Qazikola (P.W. 95), Abrarul Haq of Bari (P.W. 103) and Hira Nand, a postal employee (P.W. 132). Out of these witnesses evidence of Saghir Khan and Janoo cannot be considered at all for the simple reason that the names of their villages do not find place in list XI while the contents of the further and better particulars must be disregarded so far as the same extend the scope of enquiry beyond the allegations of the petition and the list. Hira Nand (P.W. 132) who is a postal employee stated that during the material period Ganga Shankar was Extra-Departmental Branch Post Master at Bari. This point was admitted at the bar during arguments. Abrarul Haq (P.W. 103) was polling agent on behalf of the petitioner at Bari polling station. He stated that Ganga Shankar was polling agent at Bari polling station on behalf of Sri Hanuman Prasad Misra. He also identified the signatures of Ganga Shankar on the polling agency form Ex. P34 which was signed on June 24, 1953 and was presented before the Returning Officer. Abrarul Haq and other witnesses named above stated that Ganga Shankar worked as polling agent at the polling station. This oral evidence finds support from the signatures purporting to be those of Ganga Shankar in the diary of the Presiding Officer which he was bound to maintain during polling and which is the official record of unquestioned authenticity. Thus two facts are established beyond any doubt; first that Ganga Shankar was an Extra-Departmental Branch Post Master of Bari during the material period and secondly that he worked as polling agent of Sri Hanuman Prasad Misra respondent No. 1 at Bari polling station.

32. There remain two questions for consideration, (1) whether Ganga Shankar gave any assistance to the respondents No. 1 and 5 for the furtherance of the prospects of their election, (2) whether Ganga Shankar is 'a person serving under Government of India' within the meaning of Sub-section (8) of Section 123 of the Representation of the People Act. As regards the first point, there are three witnesses of Bari named above who depose on this point. Manzoorul Hasan besides being a cultivator is a teacher in some private Maktab, Fida Husain is a petty cultivator and Mohd. Shafi deals in hides and bones. All the three are ordinary village witnesses whose uncorroborated testimony can be accepted only after due scrutiny. Manzoorul Hasan is related to one Iftikhar Alam who is admittedly a Congress worker. Though the witness added also that he was on inimical terms with Iftikhar Alam, it is significant to note that Iftikhar Alam was present in the Court precincts while Manzoorul Hasan was in the witness box. There is one further equally significant fact which makes the statements of these witnesses of doubtful veracity. There is the leaflet Ex. P1 on the record about which much has been said elsewhere in this judgment. Allegations about the distribution of this leaflet are contained in paragraph 9(b)(iii) of the petition and the list V enumerates the names of the persons who, *inter alia*, distributed leaflet Ex. P1 in the villages named in the said list. It may be noted that Ganga Shankar is not named in the list as one of those who carried on propaganda about killing of the Muslim boy and who, distributed leaflet Ex. P1. Even in further and better particulars supplied by the petitioner there is not a word about this allegation although other allegations of very serious type have been made against Ganga Shankar. This being so, it is clear that even according to the petitioner Ganga Shankar had nothing to do with the propaganda about the killing of the Muslim boy. However, the three witnesses named above were asked in the examination-in-chief about the distribution of the leaflet Ex. P1 by Ganga Shankar and the witnesses stated that he did distribute the said leaflet. This after thought of the petitioner endorsed by the witnesses clearly reflects on the evidentiary worth of their statements. They are, it appears, out to support the petitioners in season and out of season. The testimony of such witnesses, therefore, about the canvassing by Ganga Shankar cannot be implicitly believed particularly because there is no corroboration of the facts stated by each of the three witnesses. Without entering into the details of the evidence on this point we are convinced that the evidence is not weighty enough for fastening the guilt of canvassing on Ganga Shankar. He, however, did work as polling agent. But merely acting as a polling agent is not giving assistance to the candidate in furtherance of the prospects of his election as has been recently held by the Supreme Court in a so far unreported case—Civil Appeal No. 52 of 1954, Satya Dev Bushahri V. Padam Dev and others, from Judgment and Order dated May 23, 1953 of the Election Tribunal, Himachal Pradesh, in the Election Petition No. 14 of 1952.

33. In view of the above finding it is unnecessary to enter into the much debated point as to whether Ganga Shankar should be deemed to be serving

under the Government of India within the meaning of sub-section (8) of Section 123 of the Representation of the People Act. Our finding on issue No. 5, therefore, is that the corrupt practice defined in Section 123(8) has been proved in respect of Ram Lakhan Singh only and in respect of no other person serving under the Government of India or the Government of Uttar Pradesh, and this disposes of Issue No. 5.

34. *Issue No. 10.*—In para. 11 of the petition it is alleged that the returns of election expenses made by respondents No. 1 and 5 and the declarations verifying these returns are false in material particulars as specified in list XIV and consequently a minor corrupt practice as defined in Section 124(4) of the Act has been committed, and because the result of the election has been materially affected thereby the election of the respondents No. 1 and 5 is void. List XIV comprises of 15 items numbered as (a) to (o). At the time of arguments only seven items (a), (b), (c), (f), (g), (l) and (o) were pressed and the other 8 items were given up. The allegations in (f), (g) and (o) are of a very general nature only and do not mean that the returns are necessarily false, in (f) it is alleged that the accounts filed are all fictitious and false and no regular accounts books were maintained, but there is no evidence of the petitioner on this point whereas the respondent No. 1 says on oath that regular accounts of his expenses were maintained; in (g) it is alleged only that the vouchers of expenses filed by the respondents show lump sum amounts only, but this even if true would not by itself falsify the vouchers or the expenses evidenced by them; in (o) it is alleged that in his return the respondent No. 1 has shown a particular amount as total expenditure and the same amount has been shown as his receipts which is totally wrong and false, but we are unable to accept this contention of the petitioner as in any case the receipts and the expenditure would have to be balanced; and this disposes of the items (f), (g) and (o).

35. In (a) it is alleged that the Dak Bungalow at Sidhauri was used as the office and residence of the workers of the respondents, but its rent has not been shown in the return of the election expenses of the respondents. The petitioner has proved an expenditure of Rs. 8 on this account by the testimony of his witness Sri Chandra Bhal Singh P.W. 136 and there is no evidence to the contrary; the Dak Bungalow or Inspection House at Sidhauri is maintained by the Sitapur District Board, and P.W. 136 is an official of the District Board who has also filed an extract Ex. 41 from the relevant register in this connection. This expenditure was incurred to secure permission for Sri Gopal Narain Saxena, a leader of the P.S.P., to stay in the Dak Bungalow from 20th to 27th June, 1953 and this sum was paid to the District Board by the Secretary of the P.S.P., Sitapur. It is admitted that Sri Gopal Narain Saxena visited Sitapur for the election propaganda of the respondents and the fact of the payment of Rs. 8 on this account is not challenged. The only contention of the respondents in this behalf is that Sri Saxena did not actually use the Dak Bungalow but this is immaterial if the payment was actually made. This item of Rs. 8 should have been shown in the return. In (b) it is alleged that in the election campaign of the respondents their worker Chhatrapal Singh used a small loud speaker at various places for more than a month but its expenses have not been shown; the respondents contend that Chhatrapal Singh did not use any loud speaker at all; the petitioner has examined some witnesses on this point but the respondent No. 1 has come into the witness box to rebut their testimony and we are doubtful if Chhatrapal Singh really used any loud speaker. In (l) it is contended that the travelling expenses of the respondents for going to Sitapur for filing the nomination papers and for their scrutiny and also for filing the returns of election expenses have not been shown, but at the time of arguments the objection was confined only to the journey for filing the returns of election expenses; however, even if these expenses were required to be included in the returns and have not been included, they could not have exceeded a few rupees and in our opinion the non-inclusion of these expenses or of the Dak Bungalow charges does not make the returns false in material particulars as these items do not relate to any corrupt or illegal practice nor would their inclusion have raised the expenses of the respondents beyond the prescribed maximum. Our finding in respect of the items (a), (b), and (d) to (o) is against the petitioner.

36. The item (c) stands on a different footing. This item is in respect of the printing charges of the leaflet Ex. P33 which as found under issue No. 5 was issued by Ram Lakhan Singh and others at the instance of respondents No. 1 and 5 and was in fact a part of the election campaign of the respondents inasmuch as it announced five election meetings to be held in their support. As such these charges should have been included in the returns, but were not actually included. No doubt these charges would amount to a few rupees only and their

inclusion would not have raised the total expenses beyond the prescribed maximum, but it cannot be said that their non-inclusion was due to inadvertence or that it does not make the returns false in material particulars; one of the persons issuing this leaflet was Ram Lakhani Singh, a person serving under the Government of the Uttar Pradesh, and the inclusion of its printing charges in the returns would amount to an admission on the part of the respondents of the commission of the corrupt practice mentioned in Section 123(8) of the Act; consequently, they thought it advisable to exclude the printing charges of this leaflet from their returns, and in the trial they have denied this leaflet altogether; the exclusion of its charges from the returns was, therefore, deliberate and with the object of concealing the corrupt practice of Section 123(8), and as such we hold that the non-inclusion of the printing charges of this leaflet in the returns makes the returns of the respondents 1 and 5 false in material particulars and that the minor corrupt practice of Section 124(4) has been committed by the respondents No. 1 and 5 who themselves were their election agents. However, the commission of this corrupt practice of Section 124(4) could not have affected the result of the election in any way and we find, therefore, that the election of the respondents No. 1 and 5 is not void on this ground, although it does entail a disqualification under the provisions of Section 140(1)(a) of the Act.

37. Issue No. 3.—This issue is about the corrupt practice of undue influence as defined in Section 123(2) of the Act, and the allegations about it are contained in sub-para. (i) to (viii) of para. 9(b) of the petition. Sub-para. (i) says that the voters were threatened by the members and Chairman of Gaon Sabhas and Panchayati Adalats to vote for the respondents No. 1 and 5; sub-para. (ii) says that undue influence was exercised upon the Brahmin voters on the ground of caste and they were told that they would incur divine displeasure and spiritual censure if they did not vote for the respondent No. 1, a Brahmin; sub-para. (iii) says that undue influence was exercised upon the Muslim voters by telling them falsely that the petitioner was an enemy of Islam and had caused the death of a Muslim boy, Ishrat; sub-para. (iv) says that undue influence was exercised upon the Muslim voters by holding out promises to Muslims by way of declaration of the public policy of the Socialist Party; sub-para. (v) says that undue influence was exercised upon the voters by misleading them about the public policy of the Congress; sub-para. (vi) says that undue influence was exercised upon the Mahmudabad voters by telling them that during his tenure of office as an M.L.A. the petitioner had tried to have a female hospital and a school removed from Mahmudabad to Sidhauri, which is his home, and thereby he had attempted to cause difficulty and trouble to the residents of Mahmudabad for the improvement of his own home town, whereas the respondents No. 1 and 5, if elected, would have the Tahsil headquarters removed from Sidhauri to Mahmudabad for the benefit of the residents of Mahmudabad; sub-para. (vii) says that on the polling day certain acts were done at the Baunabhari polling station to prevent the voters from freely exercising their electoral right; and sub-para. (viii) says that history-sheeters and other bad characters threatened the voters to vote for the respondents No. 1 and 5. However, little or no evidence was adduced in respect of the allegations of sub-para. (ii), (iv), (v), (vi) and (viii) and at the time of arguments the counsel for the petitioner stated that he did not press these allegations. Some evidence was certainly led by the petitioner as regards the allegations of sub-para. (i) but most of this evidence was not in conformity with the particulars given by the petitioner in his list III, and when this was pointed out at the time of arguments and the petitioner's counsel was asked to confine himself to such evidence only as was in conformity with the particulars contained in list III, he limited himself to only three cases out of a long list of more than 80 cases specified in list III. These cases are of Shamsher Bahadur mentioned on the first page of list III and of Sripal Singh and Prahlad Singh mentioned on the fifth page; even in respect of these three cases it is conceded that there is very little evidence of any undue influence having been exercised by them; about Shamsher Bahadur only one witness says that he held out threats and he is Hem Nath P.W. 7; similarly as regards Sripal Singh and Prahlad Singh only one witness Chhotey Lal P.W. 34 says that they held out threats to voters, but this Chhotey Lal is of village Firozpur and deposes about Sripal Singh and Prahlad Singh having held out threats in Ferozpur only, whereas this village is not mentioned at all in list III as the field of activity of these persons; consequently, even the case in respect of Shamsher Bahadur, Sripal Singh and Prahlad Singh was later on given up by the petitioner's counsel, and this disposes of the sub-para. (i), (ii), (iv), (v), (vi) and (viii) of para. 9(b) of the petition, leaving us with sub-para. (iii) and (vii) only.

38. Sub-para. (iii) is in respect of the Muslim voters and sets forth that undue influence was exercised upon the Muslim voters of Mahmudabad and other Muslim centres by telling them that the petitioner was an enemy of Islam and would endanger Islam and so by voting for him the Muslims would incur divine displeasure and would go to hell; that from 28th June, 1953 it was falsely given out to the Muslim voters that out of his enmity with Islam the petitioner had caused the death of a Muslim boy, Ishrat, and in this connection the shop-keepers of Mahmudabad were made to observe a hartal by closing their shops and also a fictitious funeral procession of Ishrat was taken out in the Mahmudabad market; and that the Muslim voters were made to swear by the Holy Quran that they would, therefore, vote for the respondents No. 1 and 5 and not for the petitioner or the respondent No. 6, and also a leaflet Ex. P1 was distributed, and thus there was interference with the free exercise of the electoral right by the Muslim voters. However, no evidence was led to show that the Muslim voters were threatened with divine displeasure or fear of hell or that any oaths were taken from them to vote for the respondents No. 1 and 5 in preference to the petitioner and respondent No. 6. The only evidence led by the petitioner is to the effect that from 28th June, 1953 onwards the petitioner was misrepresented to the Muslim voters as an enemy of Islam who had wrongfully caused the death of a Muslim boy, Ishrat, that Mahmudabad shop-keepers were made to observe hartal by closing their shops on account of Ishrat's death and also Ishrat's funeral procession was taken out at Mahmudabad, though Ishrat has been alive all along, and that copies of Ex. P1 were widely distributed in the Muslim centres of the constituency to announce that Ishrat had been got killed by the petitioner wrongfully and out of his enmity with Islam, and the contention on behalf of the petitioner is that by this false propaganda, fraud and deception was practised upon the Muslim voters to wean them away from the Congress and the petitioner, and thus undue influence was exercised upon them within the meaning of Section 123(2) of the Act. The contention on behalf of the respondents is that there was no such propaganda at all and the petitioner's case on this point is a pure concoction, and the respondent No. 1 has also produced some witnesses from important Muslim centres of the constituency to show that there was no such propaganda and no distribution of any copies of Ex. P1.

39. We have given the facts and circumstances of the case our best consideration, and we are very doubtful if there was really any such propaganda among the Muslims, and as regards Ex. P1 we have already observed under issue No. 6 that we are not quite satisfied that this leaflet was even in existence in the election days or that it is the creation of any Socialist worker or that its copies were distributed on behalf of the respondents as alleged by the petitioner. The evidence of the petitioner is that Ishrat was injured in the Sidhauli clash in the evening of 28th June, 1953, after which the news of his death was announced at Sidhauli on the night of 28th/29th June, 1953 and the hartal was observed and the funeral procession was taken out at Mahmudabad on the following day viz. 29th June, 1953, and yet the allegation in para. 9(b) (iii) of the petition is that the hartal and the funeral procession at Mahmudabad were on 28th June, 1953 only, and no explanation has been offered on behalf of the petitioner for this discrepancy between his allegations and evidence beyond a verbal statement in the course of arguments that the date of the hartal and funeral procession was really on 29th June, 1953 but by a typing mistake this date has been wrongly shown in the petition as 28th June, 1953. Strangely enough no witness of the petitioner R.W. 4 says that he joined the alleged funeral procession or followed it and we do not know at all how it terminated. This Ishrat is the son of Haji Hafiz Mohammad Abdul Latif of Mahmudabad, R.W. 4, and no witness of the petitioner except Raghubir Prasad P.W. 64 says that he went to the house of R.W. 4 to verify the news of Ishrat's death or for condolence. No doubt R.W. 4 was once a pupil of the father of the respondent No. 1 but there is no evidence on behalf of the petitioner that there was any collusion or conspiracy between R.W. 4 and the Socialist workers in this matter or any attempt was made to conceal Ishrat's existence after alleged announcement of his death, and there is no evidence at all that R.W. 4 or his other sons joined the alleged funeral procession to give it a show of reality. If there were any such false propaganda, the actual facts would have been easily ascertained by anybody from R.W. 4 and this would have belied the propaganda. The respondent No. 1 himself has examined several witnesses from Mahmudabad and other Muslim centres like Panteypur, Babupur, Niamatpur Labraha, Bhandia, Sarwa, Saraura and Kamlapur to prove that there was no such propaganda, and no good reason has been shown why the petitioner's witnesses should be believed on this subject in preference to the respondent's witnesses; in fact if there had been any such false propaganda on behalf of the Socialists to mislead the

Muslims to wrongfully wean them away from the Congress and the petitioner, then in the natural course of events on the exposure of the falsity of this propaganda the Muslims should have felt much resentment against the Socialists for having deceived them in this way and not a single Muslim should have come into the witness box for the respondent No. 1, and the very circumstances that even after the alleged deception and fraud so many Muslim witnesses of various places in the constituency have come forward to support the respondent No. 1 and to say that there was no such propaganda makes the fact of such propaganda very doubtful, and we find that the fact of any undue influence having been exercised upon the Muslims in this way has not been proved.

40. Lastly, we have the Baunabhari incident about which the allegations are in para. 9(b)(vii) of the petition and the particulars are given in list VII(b). It is alleged that at the Baunabhari polling station on the polling day the respondents No. 1 and 5 and their agents and supporters attacked the petitioner's voters with lathis and threatened them with physical injury and thus a panic was created by the Socialist workers who roamed about with lathis; and when the petitioner's agent Ram Autar Murao protested about it he was got arrested by the Presiding Officer who was a sympathiser and supporter of respondents No. 1 and 5 and thereafter Ram Autar was taken under arrest from one polling station to another by the patrolling Magistrate, Sri Lalji Saxena, a supporter of the respondents No. 1 and 5 and an enemy of the petitioner, and all this produced fear in the minds of the voters who ran away for safety without exercising their right of vote, and thus there was an interference with the free exercise of the electoral right; in list VII(b) about twenty persons are named as the P.S.P. workers and agents, and also the name of the Presiding Officer is given as Sri Ramesh Chandra, the then District Information Officer. On behalf of the respondents it is contended that Ram Autar was arrested only because he was found in possession of a lathi in contravention of the terms of an order under Section 144 Cr.P.C. in force those days; all the other allegations of the petitioner are denied and it is urged that no elector went away without casting his vote. The parties have entered upon evidence and after considering this evidence we come to the conclusion that the petitioner has failed to prove his allegations on this point and to make out any case of undue influence. There is no evidence on his behalf that any of his voters were attacked with lathis or threatened with physical injury or that after his arrest Ram Autar was taken from one polling station to another. The petitioner's polling agent Ram Autar was certainly arrested, but it was only because he was in possession of a lathi in contravention of the order under Section 144 Cr.P.C.; the petitioner's witnesses state that initially Ram Autar had no lathi with him and there was a quarrel between him and one Putua *alias* Sarangdhar, worker of the respondents No. 1 and 5; they add that this Putua had a lathi with him and in this quarrel Ram Autar snatched away this lathi of Putua, and still the Presiding Officer, Sri Ramesh Chandra, got Ram Autar arrested and did not get Putua arrested; according to the respondent's witnesses only Ram Autar had a lathi and so he was arrested while Putua had no lathi, and they deny that Putua had any lathi or that Ram Autar snatched away any such lathi or that it was this lathi that was found with Ram Autar by the Presiding Officer; the fact that Ram Autar had a lathi with him from the very beginning is also evident from the petitioner's own document Ex. P36, which is a written application presented to the Presiding Officer of Baunabhari on behalf of the petitioner on the polling day and which says that both Putua and Ram Autar had come to the polling station armed with lathis but whereas Ram Autar was put under arrest Putua was free. Thus on the polling day the petitioner's case was that both Ram Autar and Putua had lathis with them, but in his evidence the petitioner improved upon this case and made his witnesses to depose that only Putua had a lathi and not Ram Autar, who simply snatched away Putua's lathi during the quarrel, and in these circumstances it is very probable that the respondent's case is true that Putua had no lathi and only Ram Autar had a lathi because of which he was got arrested by Sri Ramesh Chandra, Presiding Officer. Another discrepancy in the petitioner's case on this point is that in the further and better particulars given by him on 12th February, 1954 in respect of para. 12(iv) of the petition the allegation is that Ram Autar snatched away this lathi from Randhir *alias* Munna, Socialist worker whereas his evidence is that Ram Autar snatched it from Putua and there is no explanation of this discrepancy. At the same time it is significant that the name of this Randhir *alias* Munna is not to be found at all in the petitioner's list VII(b) of the Socialist workers and agents at the Baunabhari polling station.

41. Sri Ramesh Chandra himself has come into the witness box as R.W. 70, and we are not satisfied that his conduct at the polling station on the polling day was in any way improper. We are not satisfied that because of Ram Autar's arrest

any voters ran away without casting their votes, but if any voters ran away on this account it cannot be said to be any case of undue influence as in our opinion Ram Autar's arrest was not in any way improper. According to the petitioner's evidence several Socialist workers at the Baunabhari polling station were with *lathis* or *dandas* but the respondent's evidence is that none of the Socialist workers had any *lathi* or *danda*. We find it difficult to believe the petitioner's evidence on this point in preference to the respondent's evidence, specially when an order under Section 144 Cr.P.C. was in force those days and there is no evidence of any assault or threat by the Socialist workers except the incident between Ram Autar and Putua about which our finding is against the petitioner. We hold, therefore, that no undue influence has been proved to have been exercised as alleged in Para 9(b) of the petition, and this disposes of the issue No. 3.

42. *Issue No. 7.*—This issue is about the alleged systematic appeal to the Muslim voters on the ground of religion and to Brahmin voters on the ground of caste to vote for the Respondent No. 1 and not for the petitioner, and the allegations about it are contained in para. 9(g)(i) and (ii) of the petition. In para. 9(g)(iii) it was alleged that a similar appeal was also made to the voters of the Kurmi community but no sufficient particulars of this appeal were given, and so by our order dated 25th January 1954 we ordered the deletion of para. 9(g)(iii). The allegations about the appeal to the Brahmin voters are contained in para. 9(g)(i) and the particulars are given in list IV and some evidence was also adduced on behalf of the petitioner on this point, but at the time of arguments his counsel stated frankly that this evidence is not at all sufficient or satisfactory and did not press this part of the petitioner's case. Only the case about the systematic appeal to Muslim voters was pressed, and the allegations about it are contained in para. 9(g)(ii); it is alleged that the petitioner was falsely described as an enemy of Islam who had caused the death of a Muslim boy a few days before the polling and copies of the leaflet Ex. P1 were also distributed in this connection and the Muslim voters of the constituency were asked not to vote for the petitioner; we have already dealt with this part of the petitioner's case under issues No. 3 and 6 which are about the undue influence said to have been exercised upon the Muslim voters by means of this false propaganda and about the publication of false and defamatory statements by distribution of copies of Ex. P1; there we have held that we are not satisfied that any such false propaganda was made among the Muslims or any copies of Ex. P1 were distributed, and we are even doubtful if Ex. P1 is the creation of the Respondents No. 1 and 5 and their workers and if it was even in existence in the election days. We find, therefore, that the alleged systematic appeal to the Muslim voters to refrain from voting for the petitioner on the ground of his being an enemy of Islam has not been proved, and this disposes of issue No. 7.

43. *Issue No. 9.*—Our finding in respect of the corrupt and illegal practices mentioned in para. 9 of the petition is that none of these practices has been proved satisfactorily except the major corrupt practice of publication of false and defamatory statements by means of the leaflet Ex. P10 and P23 and that of obtaining of assistance from Ram Lakhan Singh, serving under the Government of Uttar Pradesh, in furtherance of the prospects of the election of the Respondents No. 1 and 5 and the minor corrupt practice of making returns of election expenses which are false in material particulars as not including the costs of printing of the leaflet Ex. P33. Our finding under issue No. 8 is that the corrupt practice of publishing false and defamatory statement as defined in Section 123(5) was committed by the Respondent No. 1 and 5 or at least by their agents, and our finding under issue No. 5 is that the corrupt practice of obtaining assistance from Ram Lakhan Singh as defined in Section 123(8) was committed by the Respondents No. 1 and 5 themselves. Because of this finding the election of the Respondents No. 1 and 5 is void under Section 100(2)(b) of the Act, and so no question of the election of the Respondents No. 1 and 5 having been procured or induced or the result of the election having been materially affected as contemplated by Section 100(2)(a) of the Act arises. As regards the minor corrupt practice of making false returns of election expenses as defined in Section 124(4) of the Act our finding under issue No. 10 is that this corrupt practice, though committed by the Respondents No. 1 and 5, has not materially affected the result of the election, and we add that the election of Respondents No. 1 and 5 was not procured or induced by this corrupt practice. This disposes of issue No. 9.

44. *Issue No. 11.*—This issue is about the alleged irregularities mentioned in sub-paras. (i) to (vii) of para. 12 of the petition. In sub-paras. (i), (ii), (vi), (vii), and (vii) it was alleged that the electoral roll of this constituency was not properly revised, that on the polling day the Presiding Officers of several polling stations

improperly refused to accept some votes which were to be cast in favour of the petitioner, that several police officers were appointed as Presiding Officers in contravention of the rules, that several Presiding Officers improperly allowed unauthorised persons to work as the polling agents of Respondents No. 1 and 5, and that several members of the Panchayat Adalats, though close relations of the respondents 1 and 5, did not inform the authorities of the intention of the Respondents No. 1 and 5 to stand for election as required by the provisions of Rule 61-A of the Rules framed under the U.P. Panchayat Raj Act; however, at the time of trial no evidence was adduced on behalf of the petitioner on these points, and at the time of arguments his counsel did not press this part of the petitioner's case and pressed only the allegations contained in sub-paras. (iii) and (iv) of para. 9.

45. Sub-para. (iv) of para. 9 of the petition says that on the polling day at the Baunabhari polling station the Presiding Officer, Sri Ramesh Chandra and the Assistant Presiding Officer, Sri Harish Chandra Bajpai assisted the Respondents No. 1 and 5 for the furtherance of the prospects of their election which materially affected the result of the election in favour of the Respondents No. 1 and 5 and against the petitioner. The details of this assistance are given in the further and better particulars filed by the petitioner on 12th February 1954 in compliance with our order dated 25th January 1954, and it is alleged that Sri Ramesh Chandra gave all sorts of facilities to the voters of the Respondents No. 1 and 5, admitted into the polling booths even those workers of the respondents who were not polling agents; indicated to the voters to cast their votes into the ballot boxes with the hut symbol, connived at Sri Harish Chandra Bajpai canvassing for the Respondents No. 1 and 5 inside the booths, allowed the Respondents No. 1 and 5 and their workers to go about freely at the polling station with lathis and thereby frighten the voters of the petitioner, wrongfully got arrested the petitioner's polling agent Ram Autar Murao, openly asked the electors to vote for the respondents No. 1 and 5 and sided with the workers of the respondents 1 and 5. All these allegations are denied on behalf of the respondents, and it is contended that there was nothing improper or partial in the conduct of Sri Ramesh Chandra and Sri Harish Chandra Bajpai at the polling station on the polling day and that Ram Autar was properly arrested at the polling station because he was found in possession of a lathi in contravention of the order under Section 144 Cr.P.C.

46. This Sri Ramesh Chandra was the District Information Officer those days but is no longer in Government service, and he has come forward as R.W. 70 to deny the allegations of the petitioner and to rebut his evidence, and under issue No. 3 we have held already that there was nothing improper in the conduct of this Officer in getting Ram Autar arrested at the polling station on the polling day, when Ram Autar had come to the polling station with a lathi in contravention of the order under Section 144 Cr.P.C. Sri Harish Chandra Bajpai, the Assistant Presiding Officer, was and is the Panchayat Raj Inspector and does not figure as a witness in this case. The petitioner has sought to prove his allegations about the partiality of Sri Ramesh Chandra and Sri Harish Chandra Bajpai by the testimony of his witness Munnu Lal, P.W. 8, Durjan Singh, P.W. 10, Ram Autar, himself P.W. 11, Sohan Lal, P.W. 12 and Sheo Narain, P.W. 123, but we do not think that these witnesses are independent or reliable; the first three were admittedly the polling agents of the petitioner in this election, the fourth is a relation of P.W. 11 and the fifth is a relation of the P.W. 10, and we do not believe them when they say that the attitude of Sri Ramesh Chandra or Sri Harish Chandra Bajpai at the polling station on the polling day was in any way partial to the Respondents No. 1 and 5 or hostile to the petitioner, and further as against their testimony we have the testimony of the respondent's witnesses, Ram Lal, R.W. 52, Mathura Prasad, R.W. 53 and Sri Ramesh Chandra himself, R.W. 70, who do not seem to be more unreliable than the petitioner's witnesses. Sri Ramesh Chandra and Sri Harish Chandra Bajpai are said to have canvassed the voters at the polling station, but no such voter has been examined as a witness by the petitioner.

47. It does appear that on the polling day differences arose between the petitioner's polling agents and the polling authorities at the Baunabhari polling station and three written applications were presented to the Presiding Officer on behalf of the petitioner; one was Ex P36 by Munnu Lal, P.W. 8, complaining that Ram Autar and Putua were equally in the wrong but whereas Ram Autar had been arrested Putua was at large; another was Ex. P37 by this very Munnu Lal complaining that the Panchayat Raj Inspector was siding with the Socialist Party and was opposing the Congress, and the third was by Durjan Singh, P.W. 10, complaining that the Socialist workers were present at the polling station with dandas, but we are not satisfied that there was any truth in these complaints and the mere fact that these complaints were made would not necessarily mean that they were

true. The probability is that in the state of high tension that prevailed at this polling station facts were magnified or even distorted by the parties to suit their own purposes; a similar complaint was made to the Presiding Officer on behalf of the Respondent Nos. 1 and 5 also, and it is Ex. R10. In view of what has been said above we are not satisfied that there was any irregularity or breach of any provisions at the Baunabhari polling station or that there was any thing improper in the conduct of the Presiding Officer or the Assistant Presiding Officer there.

48. Lastly, we come to sub-para. (iii) of Para. 12 of the petition wherein it is alleged that *panches* and *sarpanches* of the Panchayat Adalats and certain other village officers worked and canvassed for the Respondents No. 1 and 5 and some of them acted as polling agents also in infringement of the prohibitory provisions of the Panchayat Raj Act (an enactment of the U.P. Legislature) and Rules framed thereunder, thereby committing an irregularity within the meaning of Section 100(2)(c) of the Representation of the People Act which materially affected the result of the election. In list XVI(a) names and addresses of those who are alleged to have worked for the Respondent No. 1 and in list XVI(b) names etc. of those who are alleged to have worked for the Respondent No. 5 are given.

Reply of the respondents in respect of these allegations was simple denial. The Respondent No. 1 further added that there was no breach of the election laws

The matter in issue raised the following points:—

1. Whether the persons named in the two lists worked and canvassed for the Respondents No. 1 and 5?
2. If so, were they guilty of the breach of Rule 61-A of the Rules made under the Panchayat Raj Act?
3. If so, is Rule 61-A *ultra vires*?
4. If not, has the result of the election been materially affected by the working and canvassing of the persons concerned?
5. Do the provisions of Section 100(2)(c) of the Representation of the People Act apply and with what result?

49. Point 1.—List XVI(a) contained 53 and list XVI(b) 32 names. These names also included a few village officers other than *panches* and *sarpanches*. As Rule 61-A, in terms, did not apply to them, the petitioner's learned counsel did not press the cases of such officers. Cases of some of the *panches* and *sarpanches* were also frankly not pressed on the ground of paucity of satisfactory evidence. It is useless to give names of all such persons case against whom was not pressed. They are, however, Nos. 1, 5, 8, 10 to 14, 20 to 22, 25 to 27, 29, 30, 34, 36 to 42, 44, 48, 49, 51 and 53 of list XVI(a) and Nos. 4, 8, 9, 11, 13, 16 to 19, 21, 22, 27 to 29, 31 and 32 of list XVI(b).

Before proceeding to deal with the cases that were pressed it may be pointed out that the detailed discussion of evidence against each *panch* or *sarpanch* would entail long process and much repetition. To obviate this certain broad and general features are to be defined in the light of which evidence is to be scrutinised. Some of the petitioner's witnesses stated about canvassing in villages not named in the list. Evidence of such witnesses shall not be considered for the simple reason that doing so would enlarge the scope of enquiry which is not permissible under the election law.

Some of the *panches* and *sarpanches* signed the prescribed polling agency forms and filed the same before the Returning Officer. But they stated that they did not actually work as polling agents on the polling day. The polling agency forms of such *panches* and *sarpanches* presented before the Presiding Officers would have been the best evidence of their acting as polling agents on the polling day but all attempts to summon those forms from the Election Officer, Sitapur failed. At the far end of the petitioner's evidence a letter was received from that officer saying that the forms summoned were not available in the office because some of the Presiding Officers did not send them to that office. Allegation of the petitioner was that those forms were being suppressed by the Election Office in collusion with the respondents. There is, however, no evidence on the record to support this allegation. But the fact remains that the documentary evidence of some of the *panches* and *sarpanches* having worked as polling agents on the polling day is not available. In all such cases if there is satisfactory oral evidence proving that any particular *panch* and *sarpanch* worked as polling agent on the polling day, it shall be accepted.

In some cases there is evidence to show that some panches and sarpanches canvassed for the respondents but there is no rebuttal at all. In such cases evidence of the petitioner's side shall be given weight.

The petitioner's evidence shall be given even great weight in cases in which the panches and sarpanches were named in the list of witnesses filed from the side of the respondent but they were not produced.

While considering the evidence the status of each witness is to be taken into consideration provided there is no ulterior motive for his coming into the witness box but in cases in which there is only one witness of ordinary type in support of the petitioner's contention that evidence, to be on the safe side, shall not be considered sufficient.

There are some panches and sarpanches who signed the polling agency forms presented before the Returning Officer. All such panches and sarpanches invariably explained that they were disinterested persons, that they had signed the form merely to oblige some of the workers of the Socialist Party and that those workers, two or three days before polling, asked them not to act as polling agents. All this evidence, generally speaking, is not acceptable. The circumstance that any panch or sarpanch signed the polling agency form presented before the Returning Officer is bound to lend some support to the evidence of the petitioner's side against such panch or sarpanch.

50. We have carefully considered the evidence against each of the panch or sarpanch whose case was pressed before us. We find that there are some persons named in the two lists the case against whom, when judged and scrutinized in the light of the above observations, is not found to have been proved satisfactorily. Evidence against some is of witnesses belonging to villages not named in the lists. Against some there is solitary evidence of only one witness. Against one there is no evidence that he was panch. In respect of all such persons we have taken a liberal view in favour of the respondents and we hold that case against such persons is either of doubtful nature or is not proved satisfactorily. Such persons are as follows:—

List XVI(a).—1. Chhotey Lal (No. 3 of the list), 2. Gajodhar (No. 6), 3. Sant Baksh Singh (15), 4. Prahlad Singh (16), 5. Girdhari Singh (19), 7. Ram Asrey (23), 8. Mahabir Singh (24), Brij Mohan of Paharapur (43), 10. Bishwanath Singh (45), 11. Brij Mohan of Gaura (50) and 12. Deo Sahai (52).

List XVI(b).—1. Suraj Baksh (1), 2. Sattl Din (2), 3. Musharraf Ali (5) 4. Sudhakar Nath (6), 5. Nageshwar (7), 6. Maiku Lal (12), 7. Ram Raj Singh (14), 8. Rameshwar Prasad (15), 9. Mahipal Singh (20), and 10. Ram Nath (30).

Eliminating these names from the lists we proceed to deal with evidence against the rest.

51. *List XVI(a).*—*Ashirbadi* of Jaitupur is No. 2 of the list. Villages in which he is alleged to have canvassed for the respondents included Patara and Mohanpur. Patara is mistyped in the list as 'Patarā'. Two witnesses were examined against Ashirbadi. They are Gargi Prasad of Patara Khurd (P.W. 31) and Tika Ram of Mohanpur (P.W. 61). The former is a teacher in the Junior High School at Kamlapur and the latter is a panch of the Panchayati Adalat of Jairampur. Both of them stated that Ashirbadi was panch of the Panchayati Adalat of Hamirpur. There was no cross-examination on this point. There was no rebuttal either. We, therefore, hold that Ashirbadi was panch of the Kamlapur Adalat in the material period.

Both these witnesses are men of status. It is not satisfactorily shown that they had any ulterior motive in deposing against the respondents falsely. They stated that Ashirbadi canvassed for the respondents. His polling agency form presented before the Returning Officer has been proved and it is Ex. P11. They also stated that Ashirbadi distributed leaflet Ex. P10 in their respective villages. They also saw him working at the polling station on the polling day.

Ashirbadi's name was in the list of the respondent's witnesses but he was not examined. There is no rebuttal at all. Hence accepting the evidence of the afore-said two witnesses we hold that Ashirbadi was a panch and that he canvassed for the respondents during election.

Chandrika Singh of Faridpur is No. 4 of the list. Sri Krishna of Rampur Kalan (P.W. 77) is Sarpanch of the Panchayati Adalat of that villages, who stated that Chandrika Singh was one of the panches of that Adalat. Chandrika Singh (R.W. 46)

himself admitted that he was panch. Two respectable witnesses against whom no ulterior motive is proved were produced from the side of the petitioner. They were Indrajit Singh of Sheora (P.W. 81) and Mannoo Lal of Sheora (P.W. 84). The former is Pradhan of Gaon Sabha and the latter is Mukhia of the village. Sheora, the village of these witnesses, is mistyped in the petition as "Sarva". These witnesses stated that Chandrika Singh as former zamindar wielded great influence in the locality. He, according to the witnesses, canvassed support aggressively for the respondents in the village as well as at the polling station. Polling agency form of Chandrika Singh is also proved. It is Ex. P25. Though Chandrika Singh was produced to rebutt this evidence, he is without doubt an interested witness and cannot be believed in the presence of the evidence of these two respectable and independent witnesses. We, therefore, hold that Chandrika Singh was a Panch during the material period and that he carried on canvassing of aggressive type on behalf of the respondents in village Sheora during election days and at the polling station on the polling day.

Chandoo Lal of Bazidnagar is No. 7 of the list. He was admittedly a panch of the Panchayati Adalat of Shankarpur. Three witnesses stated that he worked for the Socialist Party. They are Laiq Ali of Ferozepur (P.W. 30), Sunderpal of Bajuapur (P.W. 32), and Chhotey Lal of Ferozepur (P.W. 34). Name of the village of the first as well as of the last is given in the list, but not of second witness whose evidence cannot be considered. Laiq Ali is panch of a Panchayati Adalat. He and Chhotey Lal both stated that Chandoo Lal was a Socialist worker. Both are independent witnesses. The polling agency form of Chandoo Lal presented before the Returning Officer has been proved. It is Ex. P7. Chandoo Lal admitted that he was member of the Socialist Party. Evidence and circumstances go to prove satisfactorily that Chandoo Lal worked for the respondents in the election. We give no weight to the denial of Chandoo Lal who came in the witness box from the side of the respondent. We hold that Chandoo Lal was a panch during the material period and that he worked and canvassed for the respondents.

Sheo Narain Lal of Lalpur is No 9 of the list. He was admittedly a panch of the Panchayati Adalat of Shankarpur. Evidence against him is of the very same witnesses who deposed against Chandoo Lal. Believing Laiq Ali (P.W. 30), and Chhotey Lal (P.W. 34), and disbelieving the denial of Sheo Narain Lal, who was examined as R.W. 44 from the side of the respondent we hold that he was panch during the relevant period and that he worked and canvassed for the respondents.

Moinuddin alias Ajmeri of Babupur is No. 17 of the list. He was admittedly a panch of the Panchayati Adalat of Babupur. Evidence against him that he worked for the respondents is overwhelming. Villages Niamatpur Labraha and Babupur are given in the list. Khalil Ahmad (P.W. 26) and Mohd. Zahoor (P.W. 27) of Niamatpur and Abdur Rahman (P.W. 124) and Ghulam Hasan (P.W. 127) of Babupur stated that Moinuddin worked and canvassed for the respondents in their respective villages. These witnesses are respectable and independent. There is no reason to disbelieve them. His polling agency form presented before the Returning Officer is proved and is Ex. P5. Jagdish Prasad of Madarpur (P.W. 90) and the aforesaid witnesses stated that Moinuddin worked as polling agent on the polling day. As against this reliable evidence there is the evidence of Moinuddin himself who was examined from the side of the respondent as R.W. 45. We place no reliance on his testimony and find that he was panch during the relevant period and that he canvassed support for the respondents in the villages named in the list.

Surendra Singh of Jaipalpur is No 28 of the list. Three witnesses were examined against him. They were Mahabir Singh of Sheo Singhpur which is a hamlet of Jaipalpur (P.W. 45), Nathu of Jaipalpur (P.W. 48) and Bhawanil Din of Lahoriwan (P.W. 129). Villages of these witnesses are given in the list and the witnesses are independent. They stood the test of cross-examination well. They stated that Surendra Singh was panch of the Panchayati Adalat of Kunwarpur. Surendra Singh himself came in the witness box from the side of the respondent. He was R.W. 36. He stated that he was panch but was under suspension. A panch under suspension obviously does not cease to be a panch. This statement of Surendra Singh, moreover, is not acceptable when scrutinised. He said that he was suspended more than three years ago because he was Secretary of the Socialist Party at that time. He further stated that he ceased to be Secretary of that party about three years ago. Naturally, on ceasing to be the Secretary bar of suspension against him must have been removed. So the statement of the petitioner's witnesses that he was a panch during the material period must be accepted.

Surendra Singh admitted having signed the polling agency form presented before the Returning Officer but stated that he did not work as such on the polling day. Nathu (P.W. 48), swears that he saw him working as polling agent on the polling day. Surendra Singh was formerly Secretary of the Socialist Party and he is still a member of that Party. He is one of the signatories of the leaflet Ex. P33 which was issued for holding meetings of the Socialist Party in connection with the election in question. He also distributed leaflets which were issued in support of the candidature of the Respondents No. 1 and 5. All these facts are proved from the evidence of the above witnesses. Therefore, we hold that Surendra Singh was a panch of the Panchayati Adalat of Kunwarpur and that he actively worked and canvassed for the Respondents No. 1 and 5.

Rama Asrey of Dahawa is No. 31 of the list. He is proved to be Sarpanch of the Panchayati Adalat of Dahawa. He was under suspension during the election days but he did not cease to hold the office because of suspension. Ram Narain of Sandhana (P.W. 70), Shambhoo Dayal of that village (P.W. 71) and Gur Prasad of Dahawa (P.W. 100), stated that they were canvassed by Ram Asrey. Villages of these witnesses are given in the list. These witnesses are independent and reliable. They further saw Ram Asrey working at the polling station. Ram Asrey has not been produced though his name appears in the list of witnesses of the Respondents' side. Mustafa of Andhana (R.W. 25) and Gajraj Singh of the same village (R.W. 26), were produced in rebuttal. Both of them gave negative evidence which is of no value. Gajraj Singh is uncle of Ram Asrey and worked as polling agent of the Respondent No. 1 on the polling day.

We find that Ram Asrey was Sarpanch during relevant period and that he worked and canvassed support for the Respondents No. 1 and 5.

Niranjan Kurmi of Alchauli is at No. 32 in the list. He was examined as R.W. 12 and admitted that he was panch of the Panchayati Adalat of Semra and that he acted as polling agent of the Respondent No. 1 at the polling station on the polling day, but he added that he did no other work. Hadi Khan of Semra (P.W. 113) and Kishori Lal of Kalwapur (P.W. 115), stated that Niranjan was working and canvassing support for the Respondent No. 1. These witnesses are reliable and independent. We believe them and hold that Niranjan was panch during the material period and that he worked and canvassed for the respondents.

Ramesh Chandra Tribathi is at No. 33 in the list. It is proved from the statement of Ghooru (P.W. 58), that Ramesh Chand was a panch of the Panchayati Adalat of Mahmudabad. This is not disputed. It is proved beyond any doubt that he was a very active worker of the Socialist Party. He was one of the signatories of the notice Ex. P45 which was issued for holding a meeting of the Socialist Party. He was elected the General Secretary of the Party. Items 22, 23, 25 and 47 of the return of election expenses filed by the Respondent No. 1 reflected on the work that Ramesh Chand was doing for the respondent. He paid cost of the printing of the leaflet Ex. P45. He was named in the list of witnesses of the respondent's side and, though he was present in the court room as admitted by Amanat Ali (R.W. 2), during the evidence of the respondent's side, he was not produced as a witness. Amir Chand (P.W. 117) and Rama Adhin Singh (P.W. 118), were admittedly Congress workers. They stated that Ramesh Chand was canvassing support for the respondent. Amir Chand who was one of the polling agents of the petitioner swears that Ramesh Chand worked as polling agent of the respondent at the polling station. Besides these two witnesses who were Congress workers other independent witnesses have been examined who stated that Ramesh Chand was canvassing support for the respondents. Those witnesses are Manzoorul Hasan (P.W. 65), Phekhu (P.W. 67), Ghuru (P.W. 68) and Rama Asrey (P.W. 108), all of Mahmudabad. Evidence against Ramesh Chand is overwhelming. We hold, therefore, that he was a panch of the Panchayati Adalat during the material period and that he was a very active worker of the respondents and he canvassed support for them.

Sarabjit of Alampur Jasmanda is at No. 35 in the list. Two witnesses were examined against him. They were Bishambhar (P.W. 125) and Abdur Rashid (P.W. 128), both of Haibatpur. The last mentioned village is not given in the list but it is proved that it is only a mile away from Jasmanda and $\frac{1}{2}$ of a mile away from Alampur. Both of them stated that they saw him working in their own villages as well as in Alampur Jasmanda and Bilaspur. Both these villages are given in the list. They stated that he canvassed support from them for the respondents and that they found him canvassing support in the two villages named above. There is no rebuttal of this evidence. Name of Sarabjit appears in list

of the respondent's witnesses but he was not examined. Both the petitioner's witnesses stated that he was panch of the Panchayati Adalat of Gauria. We find that he was panch and that he canvassed for the respondents.

Babu Ram Sharma of Rasoolpur is at No. 46 in the list. Witnesses who deposed against him were *Rangl Lal* of Tamnapur (P.W. 89), *Sita Ram* of Bajhera (P.W. 93) and *Pratap Bhan Tewari* of Bajhera (P.W. 143). They proved that *Babu Ram Sharma* of Rasulpur was a Panch of the Panchayati Adalat of Rasulpur. His polling agency form Ex. P29 presented before the Returning Officer is in the record. The witnesses named above proved that he worked as polling agent at the Bhurkura polling station and that he openly canvassed support for the respondents. There is no rebuttal. Case against *Babu Ram Sharma* of Rasulpur is proved.

Pratap Bhan Tewari of Bejhera is at No. 47 in the list. He himself was produced as the petitioner's witness No. 143. He admitted having worked as polling agent of the Respondent No. 1. His two polling agency forms are Exs. P31 and P44. *Rangl Lal* of Tamnapur (P.W. 89) and *Sita Ram* of Bajhera (P.W. 93) also came in the witness box and stated that he worked and canvassed for the Socialist Party in the election. There is no rebuttal. Case against him is proved.

52. List XVI(b).—*Shamsher Bahadur* of Nawada is at No. 3 in the list. He is proved to be a panch of the Panchayati Adalat of Saraora Kalan. Evidence against him is overwhelming. *Suraj Ball* of Saraora Khurd (P.W. 1), who is a Sarpanch, *Farzand Ali* of Saraora Kalan (P.W. 2), who is a Panch, *Mohd. Bahadur* of Saraora Kalan (P.W. 5) and *Babu Ram Gupta* (P.W. 83), deposed that he worked as polling agent at the polling station, that he canvassed support for the Socialist Party and that he distributed leaflets and affixed posters on the walls. Even the respondent's witness *Dojal* of Daudpur (R.W. 61), stated that *Shamsher Bahadur* used to work for the Socialist Party. Complaint Ex. P26 filed by *Babu Ram Gupta* before the Presiding Officer clearly proves that *Shamsher Bahadur* worked as polling agent. Case against him is abundantly proved.

Manmohan Singh of Majgawan is at No. 10 in the list. He is proved to be sarpanch of the Bhandia Panchayati Adalat. *Mohd. Yahya* of Bhandia (P.W. 23), *Maiku Lal* of Bhandia (P.W. 25), who is a panch and *Karamat Ali* of Bhandia (P.W. 120), proved that he worked and canvassed for the Socialist candidates. His polling agency form is proved as Ex. P2. There is practically no rebuttal. Case against him is satisfactorily proved.

Abdul Aziz Kazmi of Katra Mahmudabad is at No. 23 in the list. *Nabi Ahmad* (P.W. 62) and *Mirza Irshad Ali* (P.W. 63), both of Mahmudabad proved that he was panch of the Panchayati Adalat Katra and that he worked and canvassed for the Socialist candidates. His polling agency form (Ex. P19) presented before the Presiding Officer shows that he acted as polling agent. There is no rebuttal. Case against him is proved.

Dr. Riasat Ali of Mahmudabad is at No. 24 in the list. He was examined from the side of the respondent as R.W. 3. He admitted that he was a panch of the Panchayati Adalat. He also admitted having worked as polling agent of the Socialist candidate. The Respondent No. 1 (R.W. 75), admitted that he worked for him. He was a member and office bearer of the Socialist Party. *Nabi Ahmad* (P.W. 62), *Mirza Irshad Ali* (P.W. 63), *Shaukat Ali* (P.W. 69) and *Amir Chand* (P.W. 117), all of Mahmudabad proved that he worked and canvassed for the Socialist candidates. He is also one of the signatories of notice Ex. P45. Case against him is abundantly proved.

Musi Raza of Saraogi Tola, Mahmudabad is at No. 25 in the list. He is proved to be panch of a Panchayati Adalat. He worked as polling agent at the time of polling as is clear from the polling agency form Ex. P20. *Manzoorul Hasan* (P.W. 65), *Raghubir Prasad* (P.W. 66) and *Pheku* (P.W. 67), all of Mahmudabad proved that he worked and canvassed for the Socialist candidates. There is no rebuttal. Case against him is very satisfactorily proved.

Abdul Ghaffar is at No. 26 in the list. His polling agency form Ex. P21 proves that he worked as polling agent of the respondent No. 5 at the polling station. *Manzoorul Hasan* (P.W. 65) proved that he was panch of the Panchayati Adalat and that he worked and canvassed for the Socialist candidates. There is no rebuttal case against him is proved.

In view of the findings recorded above we hold that the persons whose cases are discussed above were either panches or sarpanches and that they worked and canvassed for the respondents No. 1 and 5 during the election. This disposes of point 1.

53. *Point 2.*—The U.P. Panchayat Raj Act, 1947 lays down, *inter alia*, about the functions and duties of panches and sarpanches. Under Section 110 of that Act rule making power is conferred on the Government. Acting on that authority the rules were framed. Subsequently a new rule 61-A was added by notification No. 15215/P.R.D.-22-48, dated December 15, 1949. Relevant part of that rule is as follows:—

"No panch or sarpanch shall take part in any election to a local body other than a Gaon Panchayat or Panchayati Adalat or to the State Legislature in any area within his jurisdiction otherwise than by casting his own vote as an elector."

The Rule is quite clear. There is no doubt that the panches or sarpanches named above did take part in the election to the State Legislature. Therefore they committed breach of the mandatory provisions of the Rule. We find accordingly.

54. *Point 3.*—Almost the same arguments were advanced before us by the respondent's counsel as were advanced before the Allahabad Tribunal in the case of the Election Petition No. 270 of 1953—Deo Chand Vs. Vashist Narain—judgment published in the Gazette of India Extraordinary Part II section 3, dated May 29, 1953. That Tribunal repelled the contentions of the respondent of that case. With respect we fully agree with the view taken by that Tribunal.

Some doubt was entertained by the Gorakhpur Tribunal (*vide* Judgment in Election Petition No. 253 of 1952—Madanpal Vs. Raj Deo Upadhyay—published in Gazette of India Extraordinary Part II section 3, dated May 16, 1953) about the applicability of Rule 61-A referred to above to the provisions of the Representation of the People Act. It, however, appears that the point was not fully thrashed out at the bar in that case. At the time of the passing of the Panchayat Raj Act, the Government of India Act, 1935 was in force. That Act empowered the Provincial Legislature to enact about the elections. Therefore the Provincial Legislature was competent to enact and make rules relating to election. Under Article 372 of the Constitution "all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force". Therefore the provisions of Rule 61-A will naturally govern the relevant provisions of the Representation of the People Act.

We hold, therefore, that Rule 61-A is not *ultra vires*.

55. *Point 4.*—We have held that 18 panches or sarpanches canvassed for the respondents No. 1 and 5. Witnesses, no doubt, stated that the canvassing by them had great effect on the election in favour of the respondents No. 1 and 5. But after giving our best consideration to the evidence on record we do not find it possible to hold that the election was materially affected by the canvassing. What the witnesses stated is not based on definite facts or figures. It is, after all, a mere guess. We do find that canvassing by the panches and sarpanches must have affected result of the election but we are reluctant, because of absence of definite evidence, to hold that the result was materially affected. We decide the point accordingly.

56. *Point 5.*—Relevant part of Section 100(2) is as follows:—

- "Subject to the provisions of sub-section (3) if the Tribunal is of opinion
- (a)
 - (b)
 - (c)result of the election has been materially affected by.....the non-compliance with the provisions of.....any other Act or rules relating to election.....the Tribunal shall declare the election of the returned candidate to be void."

It is quite clear that Rule 61-A is covered by 'any other Act or rules relating to election.' But in view of our finding on point 4, it is obvious that the provisions of Section 100(2)(c) cannot apply in this case. We hold accordingly.

In view of all that has been said above our finding on issue 11 is that the result of the election has not been proved to have been materially affected by any of the irregularities mentioned in para. 12(i) to 12(vii) of the petition, nor is the election of the respondents No. 1 and 5 void on this ground.

57. *Issue No. 12.*—As stated above our finding on issue No. 5 is that the respondents No. 1 and 5 committed the corrupt practice defined in Section 123(8) of the Act by obtaining assistance for the furtherance of the prospects of their

election from Ram Lakhan Singh who was those days serving under the Government of the Uttar Pradesh, and our finding on issue No. 6 is that the respondents No. 1 and 5 or at least their agents committed the corrupt practice defined in Section 123(5) of the Act by publication of Ex. P10 and P23 containing statements of fact which were false and which they believed to be false and did not believe to be true in relation to the personal character and conduct of the petitioner, being statements reasonably calculated to prejudice the prospects of his election; our finding is that by reason of the commission of these major corrupt practices the election of the respondents No. 1 and 5 must be declared void in accordance with the provisions of Section 100(2)(b) of the Act. Our finding on issue No. 10 is that the respondents No. 1 and 5 have also committed the minor corrupt practices defined in Section 124(4) of the Act by making their returns of election expenses which are false in material particulars in as much as the costs of the printing of the leaflet Ex. P33 have not been shown in them; but this corrupt practice has not materially affected the result of the election. No other corrupt or illegal practice or material irregularity has been proved to our satisfaction.

Consequently, under Section 98 of the Act we would declare the election of the respondents No. 1 and 5 to be void, and under Section 99 of the Act we would record a finding that the respondents No. 1 and 5 have committed the corrupt practices defined in Section 123(5) and (8) and Section 124(4) of the Act which entails a disqualification upon them under Section 140 of the Act. In our opinion no other persons have been proved in this case to have been guilty of any corrupt or illegal practice. As regards the costs of the case we would order the parties to pay their own costs; the petitioner took all sorts of grounds in his petition and alleged all kinds of corrupt and illegal practices and irregularities and produced a large volume of evidence but has been able to substantiate only three charges; the respondents themselves have had to incur heavy expenses in meeting the case of the petitioner and in these circumstances it would be only reasonable and fair that the parties bear their own costs.

(Sd.) R. SARAN, *Chairman.*

(Sd.) M. U. FARUQI, *Judicial Member.*

The 27th September, 1954.

JUDGMENT

PER A. SANYAL, ADVOCATE MEMBER

1. I had the advantage of reading the judgment of my learned colleagues and I have given to it my best consideration. I agree with my learned colleagues regarding their findings on various issues but I regret that I can not agree with some of the findings and I propose in my judgment to give in detail my reason for the dissent.

2. My learned colleagues have, in their judgment, given the pleadings in detail and I need not repeat them here.

3. I cannot approach this case without mentioning one aspect of it. A perusal of the petition will show that the petitioner charged the respondents with all kinds of corrupt practices mentioned in Sections 123, 124 and illegal practice mentioned in Section 125 of the Representation of the People Act. These charges were made in an irresponsible reckless manner and ultimately the petitioner could not substantiate many such charges. These charges have been dealt with in the judgment of my learned colleagues and it is unnecessary for me to go over the same matter again. The petitioner had no difficulty in producing witnesses in large numbers, many of whom have been held to be unable to prove his case and they have been disregarded by my learned colleagues. I am of the opinion that in election cases the electors are invariably divided on party lines and it is not difficult, nay it is easy, to get witnesses to depose to facts which the parties want. In this particular case the petitioner has produced a number of witnesses who are alleged to be the workers of respondents No. 1 and 5. It is, therefore, necessary to examine the oral evidence in this case with great caution.

4. I propose to deal with the issues in this case in the order in which my learned colleagues have taken them.

5. *Issue No. 2.*—This issue is about the major corrupt practice of bribery as defined in Section 123(1) of the Representation of the People Act, 1951. The finding is that the evidence to prove this charge is not sufficient or satisfactory and has been decided against the petitioner; I agree with this finding.

6. Issue No. 4.—This issue is about the major corrupt practice of hiring and procuring of vehicles for the conveyance of electors on the polling day to and from the polling stations. The finding is that the evidence produced by the petitioner is not sufficient or satisfactory and it has been decided against the petitioner; I agree with this finding.

7. Issue No. 1.—This issue has been dealt with by my learned colleagues under Issue No. 3.

8. Issue No. 6.—This issue is about the publication of false and defamatory statements which is a major corrupt practice as defined in Section 123(5) of the Representation of the People Act, 1951. The statements alleged to be false and defamatory are contained in three leaflets namely Exs. P1, P10 and P23. The finding of my learned colleagues regarding Ex. P1 is that the petitioner has failed to prove by satisfactory evidence that the respondents and their men were responsible for the publication and circulation of Ex. P1 and consequently the election of the respondents 1 and 5 cannot be held to be void on the ground of this leaflet; I agree with this finding.

9. It is in regard to the interpretation of Exs. P10 and P23 that I differ from my learned colleagues and it is necessary that I should give my reasons in detail.

10. Exs. P10 and P23 were both printed at Jan Sahitya Press, Lucknow and there is no doubt that these leaflets were issued by the Socialist party and respondents 1 and 5 were candidates of that party. To substantiate the charges under Section 123(5) of the Representation of the People Act, 1951, the petitioner has *inter alia* to prove (a) that the statements contained in leaflets Exs. P10 and P23 are statements of fact which are false or either believed to be false or not believed to be true (b) that the statements are in relation to the personal character or conduct of the candidates. I shall not for the purpose of this case give the other ingredients of this section. So far as Exs. P10 and P23 are concerned, in my opinion, it is a question of interpretation of the said documents and I have no hesitation in coming to the conclusion that these leaflets do not contain statements of fact in relation to the personal character or conduct of Sri Tara Chand and Sri Baiju Ram who were the candidates set up by the Congress party. These leaflets condemn the administration of the country by the Congress Government and state what the Praja Socialist Party has been doing to fight against the mal-administration of the Congress Government.

11. The leaflet Ex P10 is an appeal to the electors (Janta) of Sidhauri Tahsil to vote for respondents 1 and 5 who had been nominated by the Praja Socialist Party. It refers to the first general election and states that the people know how the Congress candidates were elected and how subsequently by an election petition they lost their seats in the Assembly. It goes on to say that the Praja Socialist Party congratulates the electors (Janta) for this success; the leaflet then says that the same defeated candidates are being imposed on the electors again. The next paragraph of the leaflet is an attack on the Congress mal-administration during the time that the Congress candidates namely Sri Tara Chand and Sri Baiju Ram were members of the State Legislative Assembly. These two persons namely Sri Tara Chand and Sri Baiju Ram as members of the Legislative Assembly were limbs of the Congress Government and it is for this reason that the paragraph begins "In dono Congresee ummedwaron key karya kaal mein... tahsil ki janta par kiya kya atyachar nahi hue"? Evidently this means that the people of the Tahsil suffered "atyachar" (oppression) during the Congress regime and these two candidates are representatives of that regime. It does not say that the "atyachar" was committed by these candidates. The next phrase reads as follows "chorian, dakey aur katal barh gae". It means that during the Congress regime thefts, dacoities and murders increased. This is an attack on the Congress administration and it cannot be said that these offences had been committed by the Congress candidates.

12. The next phrase is "police se mil kar abodh janta looti hai". This phrase had been the subject of discussion at the bar. The petitioner's counsel said that the phrase meant that the Congress candidates in collusion with the police looted the ignorant masses. This, in my opinion, is entirely incorrect. The phrase is in indirect form. It only means that the bad elements of society looted the ignorant masses and the police did not control the bad elements, on the other hand, the police was in league with the bad elements. By no stretch of imagination can it be said that the two Congress candidates namely Sri Tara Chand and Sri Baiju Ram were in league with the police and looted the ignorant masses.

13. The next phrase is "nirdosh vyakti phanse gae, unki belzati ki gai". Here again it cannot be said that the Congress candidates named above did any of these things.

14. The next phrase is "nahar key pani key lie hai machi rahi". This again is an attack on the Congress administration in regard to their policy about canal water. Here ends the attack on the Congress administration and, in my opinion, the statements contained in this paragraph are not of fact but of opinion about the Congress administration and the reference to two Congress candidates is because as Congress M.L.As. they are part of the Congress administration. These statements are not in relation to the *personal* character or conduct of the candidates but it is a criticism of them as representatives of the Congress regime. It is a criticism of Sri Tara Chand and Sri Baiju Ram as public men holding political position. I may usefully refer here to the case of Sheikh Mohd. Mansul Vs. Mlv. Mohd. Safi Daudi (Tirhut Division case) Hammond, page 877 where it was held by the Election Tribunal that a distinction must be drawn between the criticism of a candidate as a politician or a public man, and statements in relation to his personal character and conduct. Criticism of his public activities, however ill-mannered, unfair or exaggerated it may be, is not forbidden. It is only when "the man underneath the politician" is attacked and his honour, integrity or veracity assailed that an election is liable to be set aside. The same view was taken in the Hoshiarpur-West-Mohammadan Constituency 1937 case *vide* Sen and Poddar, page 399. I may also quote a passage from the judgment of Mr. Justice Darling in the Cockermouth Division case reported in 50'M & H/ page 154, "Now it must be noted that what the Act forbids in this: you shall not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory unless it amounts to false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact, which affect the personal character of the candidate and a false statement of fact which deals with the political position or reputation or action of the candidate".

15. As I have stated above, the statements contained in the paragraph only means that during the Congress regime there was mal-administration, offences increased, the bad element of society were not kept under control by the police, rather they looted the illiterate masses in collusion with the police, innocent persons were implicated and disgraced etc. and the Congress candidates namely Sri Tara Chand and Sri Baiju Ram were responsible for the mal-administration as public men and as members of the Congress party in the Assembly and as such part of the Government.

16. The next paragraph states that the Socialist Party made a constant fight against the "atyachar" by the police and Congress, the phrase actually used is "anyay key viruddh police aur Congress ke karya kartaon dwara atyachar key khilaf nirantar yudh kiya". This phrase makes it quite clear that the "Atyachar" (oppression) referred to in this leaflet is by the police and Congress "kariya kartas". It has no reference to "atyachar" by the Congress candidates.

17. The next paragraph says that the electors are being tempted in various ways by offer of cement, services etc. by those who looted for a year and a half. Here again I am of the opinion that the reference to the two Congress candidates has been made not because they were offering jobs to the public but because the Congress is making these offers to support the candidature of their nominees. As I have stated above, the looting of the illiterate masses is by the bad elements of the society which did what they liked because the police and the Government had no control over them.

18. The next paragraph says that if the electors want to end this oppression and suffering of the masses they should vote for the Socialist candidate. Here again I wish to emphasise and point out that "papachar" or misdeed is not by the Congress candidates but by the Congress Government.

19. The last paragraph on which great emphasis has been laid is that votes may be given to respondents No. 1 and 5 and thus "atyacharion ko parajay deejie". Great emphasis has been laid on these words which can be translated as "defeat the oppressors". It has been argued that this refers to the Congress candidates and they have been described here as "atyachari" (oppressor). I have taken pains to analyse the leaflet phrase by phrase and I have attempted to

show that the statement in this leaflet is only an expression of opinion of the Socialist party against the Congress Government and the reference to the Congress candidates who had been elected before and were being reimposed on the electorate was because they were part and parcel of the oppressive Government and therefore they will become the representatives of the Congress oppressors. I need not say more about this leaflet. I have read it several times and the more I read the more I feel that this leaflet is an attack by the Socialist party on the Congress Government and it is not an attack on the personal character or conduct of Sri Tara Chand or Sri Baiju Ram and the publication of this leaflet was not reasonably calculated to prejudice the prospects of Sri Tara Chand or Sri Baiju Ram.

20. The next leaflet is Ex. P23 and is of a very similar nature. This is also an appeal to the electors (janta) of Tahsil Sidhauri. It begins by referring to the dirty methods by which Congress succeeded in the general election and how they were defeated and announced that election will take place on 1st of July. The next paragraph refers to the oppression that took place during the "karyakal" of the Congress M.L.As. It goes on to say, "chorian, dakey, katal par kol lagam na rahi" i.e., there was no control over thefts, dacoities and murders.

21. The next phrase says, "gundon ka bol bala ho gaya" i.e. gundas had the upper hand. The paragraph goes on to say that when men of reputation and education could not maintain their respect one can imagine the condition of the poor illiterate masses. The last paragraph asked the electors to vote for the respondents No. 1 and 5 and refers to the Congress candidates in these words, "In atyacharion ko chunav mein hara kar sabak seekhie" i.e. defeat these (atyacharies) oppressors in this election and teach them a lesson. Here again a great emphasis has been laid by the petitioner's counsel that the Congress candidates have been referred to as "atyacharies" (oppressors). This argument, in my opinion is not correct. I have already expressed my view about this word while discussing leaflet Ex. P10 and I may repeat again that the "atyachar" (oppression) is by the Congress Government and these candidates being Congress M.L.As. and as much limb of the Congress Government have been described as "atyachari". It is not an attack on the personal character or conduct of the candidates and in my opinion, the publication of these leaflets were not reasonably calculated to prejudice the prospects of the Congress candidates and they did not so prejudice and do not amount to corrupt practice as defined in Section 123(5) of the Representation of the People Act, 1951.

22. I may usefully cite here the case of Western Towns Sikh Urban Constituency, 1937, Jawand Singh petitioner Vs. Sardar Sahib S. Ujjal Singh, respondent, reported in Sen and Poddar Indian Election cases, page 854. It was held in that case that to describe a candidate as an agent of a party which is called "king of gundas, badmashes, sultan and swallows of monies of Gurdwaras" is not a statement of fact and is not "publication of false statement of fact". Publication of such statements although false may not, having regard to other facts, prejudice that candidate's prospects of election.

23. The petitioner Sri Tara Chand has voluntarily and wrongly taken upon himself to say that these leaflets are an attack on his personal character and conduct and has denied the crimes which were never attributed or imputed to him. The statements contained in leaflets Exs. P10 and P23 are really an attack on Congress administration and lack of proper control over the bad elements in society with the result that crimes increased, poor and illiterate masses were oppressed etc. This is the opinion of the Socialist party. This opinion may be ill-mannered, unfair or exaggerated but it is not forbidden under the law.

24. It has been argued that the petitioner was not cross-examined by the respondent's counsel on this point. The reason is obvious because the statements in leaflets Exs. P10 and P23 were not directed against the personal character or conduct of Sri Tara Chand or Sri Baiju Ram. It was nowhere said that the Congress candidates themselves committed these crimes but that during the time that they were Congress M.L.As. and part of the Congress Government, crimes increased, the Government and police had no control over the bad elements in society and the poor illiterate masses were oppressed. The petitioner's denial that he did not commit any crime is thus of no avail. The petitioner in his statement regarding Ex. P1 says ".....in fact I lost the election because of this very leaflet". The emphasis is not on Exs. P10 and P23 but on Ex. P1.

25. It is worthy of note that Sri Baiju Ram has not come forward to deny that he did not commit the crimes referred to in the above leaflets. He rightly thought that the statements in the said leaflets are not an attack on his personal character or conduct but is only an expression of opinion of the Socialist party about the Congress administration.

26. In this connection I may refer to the statement of one of the witnesses produced by the petitioner namely P.W. 143 Sri Pratap Bhan Tewari, a panch of the Panchayat Adalat of Rasoolpur. Regarding Ex. P10 he says in his examination-in-chief "It (Ex. P10) is stated that the police had troubled the public and innocent persons had been implicated, atrocities had been committed and dacoities had taken place; it contained an appeal for votes for Sri Hanuman Prasad Misra and Sri Kanhiya Lal with a direction that their opponent should be defeated". This is certainly not an attack on the personal character of conduct of Sri Tara Chand or Sri Baiju Ram.

27. The petitioner has also produced P.W. 75, Sri Sheo Nath Singh, Pradhan of the Gaon Sabha of Pokhra. This witness in his examination-in-chief with reference to Ex. P23, states as follows, "I got a leaflet of the Socialist party entitled, 'Sidhauli ki janta se appeal' and pointing out the short comings of the Congress regime over the names of three or six persons including Sri Mahabir Prasad and Madhav Prasad. Respondent No. 1 has produced R.W. 41 Sri Madho Prasad one of the signatories of leaflet Ex. P23. This witness was cross-examined at great length but not one question was put to him regarding Ex. P23. He does not say that this leaflet was a personal attack on Sri Tara Chand or Sri Baiju Ram.

28. Considering the entire facts and circumstances of the case-I am of the opinion that Respondents No. 1 and 5 did not commit the corrupt practice defined in Section 123(5) of the Representation of the People Act, 1951 and their election cannot be declared void on that ground.

29. *Issue No. 5.*—This issue concerns the corrupt practice of obtaining assistance from persons serving under the Government of India and the Government of Uttar Pradesh as defined in Section 123(8) of the Representation of the People Act, 1951. The allegations about it are contained in paragraph 9(e) of the petition and the particulars are given in list XI and supplemented by further and better particulars.

30. I shall first deal with the case of Sri Ram Lakhan Singh of Parewajal. He was Kurkamin for Taqavi collection in the Sidhauli Tahsil of the Sitapur district from 1st June, 1953 to 15th July, 1953 and was during that period serving under the Government of Uttar Pradesh within the meaning of Section 123(8) of the Act. His circle comprised of villages Mathura, Deslaunkia and Jankinagar not included in this constituency. He is resident of Parewajal which is 8 miles from Sidhauli and his circle is about 30 miles from Sidhauli. Parewajal is not on this road but a road bifurcates about one mile from Sidhauli to Parewajal so that if one has to travel from Parewajal to Mathura in Ram Lakhan's circle he will have to travel from Parewajal upto one mile of Sidhauli and then turn to Mathura. The distance between Parewajal and Mathura will thus be about 37 miles or more.

31. The allegation in the petition is that Ram Lakhan worked for the respondents 1 and 5 at Parewajal, Nayagaon and Saraura and did canvassing for them for the full month of June 1953. It is further alleged that he issued a notice Ex. P33 along with others in support of respondents 1 and 5 informing the public of the dates of public meetings to be held on 17th June, 1953 at Parewajal, on 18th June, 1953 at Kunwarpur Bazar, on 19th June, 1953 at Mau, on 20th June 1953 at Nayagaon and on 21st June 1953 at Saraura. Further he toured the neighbouring villages of Parewajal on 15th and 16th June, 1953. It is further alleged that on 29th and 30th June 1953, Ram Lakhan made rounds of Parewajal and its adjoining villages reminding people to vote for the respondents on 1st July 1953.

30. The petitioner has taken upon himself to prove that Ram Lakhan actually did canvassing for respondents 1 and 5 throughout the month of June 1953. He has failed to prove this false and reckless allegation. Ram Lakhan was working in his circle as Kurkamin and made collections from the tenants throughout the month of June 1953 except for five days when he was out of his circle and came to Sidhauli to deposit his collections in the treasury. These five days are (i) 8th to 10th June 1953, (ii) 16th June 1953, (iii) 25th June 1953. Ram

Lakhan has filed the counter-foils of receipts for collections made by him during this period. They are Exs. R8 and R9. A perusal of these Exhibits will show that Ram Lakhan was present in his circle and collected 'Taqavi' from day to day and prepared receipts and gave them to the tenants on the date that he made the collections. He has said so in his statement on oath and no one has come forward to rebut it. It is for this reason that I hold that the petitioner has miserably failed to prove his sweeping allegation against Ram Lakhan Singh. The petitioner has built his case on the three gaps mentioned above and has produced evidence to show that Ram Lakhan came to Parewajal to have signatures of the alleged signatories of Ex. P33 during the period from 8th to 10th June 1953. I shall deal with Ex. P33 separately and there I shall give my opinion about this document. The next gap is 16th June 1953 but as the alleged meeting announced in leaflet Ex. P33 was to be held on 17th June 1953 at 2 p.m. the petitioner has produced witnesses who say that Ram Lakhan was present at Parewa on 17th June, 1953 and made arrangements for the meeting and was at the meeting on that day. The third and the last gap is 25th June 1953 and there is vague evidence that Ram Lakhan did canvassing about that time. There is no evidence that Ram Lakhan toured the neighbouring villages of Parewajal on 15th and 16th June 1953. There is no evidence that Ram Lakhan Singh made a round of Parewajal and its adjoining villages on 29th and 30th June 1953. Ex. R9 clearly shows that Ram Lakhan Singh made as many as five collections on 15th June 1953 at Mathura and on the following day namely 16th June 1953 brought money to Sidhauri. In the face of this documentary evidence I am unable to accept the petitioner's evidence. As regards the allegation of 29th and 30th June, Ex. R9 shows that on 29th June Ram Lakhan made two collections, one at Mathura and the other at Jankinagar and on 30th June 1953 he collected 'Taqavi' at Jankinagar. The allegations of the petitioner regarding these days have not been supported by any definite evidence and have been contradicted by documentary evidence.

33. I shall now deal with the witnesses produced by the petitioner regarding the activities of Ram Lakhan Singh. The witnesses particularly relied on by the petitioner are Badlu of Bhanpur, P.W. 29. This village is not in the list or the particulars given by the petitioner and this evidence has to be ignored. This witness does not seem to know Ram Lakhan Singh well for he says that Ram Lakhan Singh had been working as Kurkamin for 4 or 6 months upto the polling day. This witness further says, that Ram Lakhan had worked for the Socialist Party throughout the month of June 1953 which is entirely false in view of Exs. R8 and R9. The next witness relied on is P.W. 45 Mahabir of Sheosinhpur hamlet of Jaipalpur. He says that Ram Lakhan was a Socialist worker but he does not fix any time or date and the nature of the work is not disclosed. I am unable to rely on this kind of vague statement. The next witness relied on is Nattha of Jaipalpur P.W. 48. This witness does not even know the name of Ram Lakhan. He says "Surendra Singh, Bishwanath Singh and a thakur of Parewajal named Ram Narain Singh or something like that and working as Kurkamin were the Socialist workers in my village in this election". This evidence says nothing further about Ram Lakhan. Like other witnesses he does not fix any time or date of his work, nor does he say the nature of the work alleged to have been done by him. I am unable to accept this kind of vague and indefinite evidence. The next witness is Babu Ram of Saraura P.W. 50. This witness also says that Ram Lakhan was a Socialist worker and used to come to his village "off and on" for this work. This evidence is also vague and indefinite and cannot be relied upon. The next witness is Swami Dayal of Saraura P.W. 52, he says that Ram Lakhan Singh of Parewajal used to visit his village during election days for Socialist propaganda. This witness does not fix any time or date and his evidence is vague and indefinite and cannot be accepted. The next witness is Ahibaran Singh of Parewajal P.W. 94. This witness says that Ram Lakhan is the grandson of his cousin. It is for this reason the petitioner lays great emphasis on the evidence of this witness. He says that Ram Lakhan was one of the Socialist workers in the election. This witness says that he attended the Socialist party meeting of Parewajal 12 or 13 days before polling. He says that Ram Lakhan Singh shouted slogans at the conclusion of the meeting though he did not speak. He further says that leaflet Ex. P33 was given to him by Ram Lakhan in the meeting itself. He does not give the time or place where he saw him working. He further says "Ram Lakhan Singh had come to Parewajal one day before the meeting and went away from Parewajal on the day following the day of the meeting". This statement is a deliberate lie, not supported by any other witness of the petitioner and is contradicted by Ex. R9 from which document it appears that on 17th and 18th June 1953 Ram Lakhan made collections of 'Taqavi' at

Mathura and Desilaokla. The next witness is P.W. 98 Girdhari of Ganeshpur a hamlet of Alaiapur. He says that Ram Lakhan worked for the Socialist Party and canvassed him twice, once 14 or 15 days before polling and again 6 or 7 days after the first canvassing. He had tried to fix the time of canvassing about the 15th or 16th June 1953 and about 21 or 23rd June 1953. Ex. R9 shows that upto 15th June Ram Lakhan was in his circle and between 20th and 24th June also he was in his circle. The statement of this witness is also indefinite and contrary to the documentary evidence. I am unable to rely on this kind of vague and indefinite evidence. Chand P.W. 106 resident of Saraura states like other witnesses that Ram Lakhan of Parewa worked for the Socialist party and canvassed him 15 or 20 days before polling. This also is a vague and indefinite statement and I am unable to accept this. The witnesses of the petitioner have deliberately made vague and indefinite statements because they knew that they would be contradicted by Exs. R8 and R9.

34. I shall deal with the witnesses Mool Chand of Ahewa P.W. 105 and Harnath Dixit of Alaiapur Saraura P.W. 144, when I shall deal with Ex. P33 as these persons are alleged to be signatories of that document.

35. From the reading of the evidence referred to above it will appear that the petitioner's witnesses have not fixed any particular date or time and they vaguely stated that it was 15 or 20 days before polling, 12 or 13 days before polling and so on. Unless the witnesses fix a particular day and time, it is impossible for the respondents or for Ram Lakhan to rebut the same. It is very easy to produce any number of such witnesses who may state anything without fear of contradiction and it will be unsafe to rely on such evidence to prove the charge of major corrupt practice against respondents No. 1 and 5 and to condemn Ram Lakhan Singh and I would not hold that respondents 1 and 5 obtained or procured the assistance of Ram Lakhan Singh for furtherance of the prospects of their election.

36. I cannot leave this part of the case without referring to the statement of Ram Lakhan Singh R.W. 35. He is a boy of about 18 or 20 years of age. He had just been appointed to a temporary post of Kurkamin in a circle which was between 30 or 40 miles away from his home at village Parewajal. He says that in those days he was living at village Dhandi. He denies on oath that he did any canvassing for respondents 1 and 5. He denies that on the occasion of his three visits to Sidhauli, he visited Parewajal, Saraura, Manua or Alaiapur on his way to Sidhauli or back. He further denies that he signed any draft notice announcing any meeting in this election nor did he obtain signature of anybody else on such paper. He further denies that he held any meeting at Parewajal or distributed any leaflet. The reference is to Ex. P33. In cross-examination a suggestion is made that on 8th June 1953 after depositing Rs. 500 in the Tahsil Treasury he did not wait at Sidhauli for the Tahsildar to come and grant him receipt but went to his home at Parewa with the money and came to Sidhauli to deposit the money and get the receipt. This suggestion is denied by him and I would accept it because he would not take the risk of taking this money home. He would rather deposit in the treasury for safety and wait for the receipt till the Tahsildar came. He did not come to Parewajal on 1st of July 1953 to cast his vote. I am prepared to accept the whole statement as true and I am unable to believe that this youngman in the thresh-hold of his career and in search of service under the Government would risk his future by working in an election against Government orders. Respondent No. 1 says that he does not know Ram Lakhan Singh and I am prepared to accept his statement. There is no evidence on the record to show that this young man of about 20 was such an important resident of Parewa that he would be known throughout the constituency. I hold that Ram Lakhan Singh did not do any work for respondents 1 and 5 in this election, he did not sign the notice (Ex. P33) and he did not attend the alleged meeting on 17th June 1953.

37. The alleged meeting held at Parewajal on 17th June 1953 is deposed to by the witnesses mentioned above but it is worthy of note that none of those witnesses stated when the meeting began and when the meeting terminated. A great deal depends on this because it has been argued by the petitioner's counsel that it was physically possible for Ram Lakhan to be present at this meeting and then cover the distance of about 37 miles from Parewajal to his circle at Mathura and collect 'Taqavi' there on 17th June 1953. The petitioner's counsel having failed to produce evidence on this point asks us to presume that the meeting at Parewa Bazar started at 2 p.m. because leaflet Ex. P33 says so. He further asks us to presume that the meeting terminated at such a time as to make it physically possible for Ram Lakhan Singh to cycle this long distance on a summer afternoon and reach his circle sometime in the evening and find an obliging tenant to pay "Taqavi"

to him at night. That it would be improper to make such presumption will appear from the statement of P.W. 129, Bhawani Din who states that the Kunwarpur meeting scheduled to start at 2 P.M. on 18th June 1953 continued till after 6 P.M. The statement is as follows, "I reached the Kunwarpur market at about 6 P.M. I remained in the meeting for about two and a half hours after which I came away while the meeting was still going on". I shall presume nothing and as the petitioner has failed to produce any evidence on this point, I shall not accept this part of his case. It is unfair to the respondents and to Ram Lakhan to decide the matter against them on presumptions.

38. I shall now come to Ex. P33. On the face of it, it is an innocent document announcing meetings to be held at certain places on behalf of the Praja Socialist party. This notice is alleged to have been issued on behalf of 18 persons whose names are printed in the notice and Ram Lakhan Singh, Parewa, is shown as the first alleged signatory. It is because Ram Lakhan Singh's name appears in this notice that the petitioner has laid great emphasis on this document, for Ram Lakhan Singh was a Government servant in the month of June 1953. This notice announces that 12 important persons and others of the Socialist party will address five meetings mentioned therein. The burden is on the petitioner to prove that the respondents or his agents or any other person with the connivance of the respondents or his agents printed and published this notice. To discharge this burden the petitioner has produced Sri Harish Chandra Pandey P.W. 134, proprietor of 'Vishwa Printing Press', Hewett Road, Lucknow. This witness has not said when the leaflet was printed, he cannot say who placed the order and who paid for it and he has not produced the original manuscript and it is impossible, therefore, to show that the conveners of the meetings named in Ex. P33 actually put their signatures. In this state of things the petitioner's counsel has argued that Ex. P33, being a printed document, it should be presumed that the conveners of the meetings actually put their signatures and that all the statements contained in this document are true. This argument has appealed to my learned colleagues but I beg to differ from them with respect. Because a document has been printed it does not make it genuine in the sense that every thing contained in the document is true and should be accepted as such. In my opinion, the petitioner has to prove by positive evidence that each and all of the 18 persons named as conveners of the meeting put their signatures on the draft which was printed. The printers do not know and do not care to know whether the conveners actually put their signatures or not. They simply want to know the names which they have to print and nothing more. It is common knowledge that the conveners of public meetings whose numbers are sometimes very large do not actually put their signatures though the names are printed as conveners. In the case of Sri Shiva Dutt Vs. Sri Bansidas Dhangar, Election Petition No. 282 of 1952, an alleged signatory of a leaflet in that case stated before this tribunal that he had not put his signature but he had no objection to his name being printed in the leaflet. I have read in a reported case that a leaflet was issued over the names of Mr Jinnah and others though the Tribunal said that at that time Mr. Jinnah was in England. It seems to me, therefore, unfair to presume that any particular person put his signature on this leaflet Ex. P33 unless it is definitely proved.

39. It is common knowledge that the persons whose names are given as conveners are always men of importance to attract an audience. The petitioner has given no evidence to show that Ram Lakhan Singh was a man of such importance in Parewa to figure as a convener. I have already said that he is a young man of about 20 years of age, in search of a Government service, and it is most unlikely that he would be a signatory to this notice.

40. The petitioner has produced two witnesses who are alleged signatories of Ex. P33. One is Mool Chand of Ahcwa P.W. 103. He says that he was a worker of the Socialist party. He names other workers of that party but he does not say that Ram Lakhan Singh was worker. He states that Ram Lakhan brought the draft of leaflet Ex. P33 for his signatures and that Ram Lakhan Singh said that he had signed it already. He does not remember whether the draft was a manuscript or type written. He further says that the leaflet bore six or seven signatures already when he signed it. It may be noted that Mool Chand's name is ninth in the list. The other witness is Harnath Dixit of Alipur Saraura P.W. 144. He also states that he was a worker of the Socialist party and he signed a paper for the Socialist party brought to him by Ram Lakhan Singh. He states that this paper was blank. This witness has given a direct lie to Mool Chand and these are the only two witnesses on whom reliance has been placed that Ram Lakhan Singh had actually signed this leaflet Ex. P33. I am not prepared to base my judgment on the evidence of these two witnesses.

41. In order to test the genuineness of this document Ex. P33, I shall examine it more closely. Of the 18 persons who are shown as conveners, 11 persons namely Nos. 2 to 5, 9, 8, 10, 11, 14, 16 and 18 are not workers of the Socialist party at all and the petitioner has given no evidence that they worked for the respondents Nos. 1 and 5. Regarding five of them namely Nos. 6, 7, 9, 13 and 15, the evidence produced by the petitioner that they were workers of Respondents Nos. 1 and 5 is very meagre. It has been argued by the counsel of the petitioner that all these 18 persons who were conveners of the meetings mentioned in Ex. P33 should be presumed to be workers of the Socialist party and further to have signed the said document as conveners. I am unable to accept this argument and I hold that they were not all workers of the Socialist party and that it has not been proved that they actually put their signatures on Ex. P33.

42. As regards the important persons who were to speak in these meetings 12 names are given including Sri Hanuman Prasad Misra and Sri Kanhaiya Lal. The important persons from outside are (1) Ram Sagar Misra, Lucknow, (2) Abodh Saran Verma (Lalji) M.L.A., (3) Virendra Bikram Singh (Lallu Bhaiya) Bara Banki, (4) Sri Thakur Singh Ji Yadav, Shubhan Nagar. There is no evidence produced by the petitioner that any of these persons ever came and spoke in any of the five meetings mentioned in it. In fact the evidence produced by the petitioner only shows that Pt. Madho Prasad Misra and Sri Hanuman Prasad were the only two speakers out of this list who addressed the Kunwarpur meeting on 18th June 1953. These two persons, however deny that they addressed that meeting. This fact also proves that this document did not contain true facts and is not, therefore, genuine. The one important person who did come in this constituency and spoke in the meetings was Dr. Ram Manohar Lohia and it is surprising that this man's name does not find a place in this notice.

43. The leaflet Ex. P33 announces five meetings. Petitioner has produced one witness of the meeting at Parewajal, in order to involve Ram Lakhan Singh. The evidence however, of this solitary witness is very unsatisfactory. Ahibaran Singh P.W. 94 says that Ram Lakhan Singh was sitting on the dais and did not address the meeting but he shouted slogans at the end. That is the part he is said to have played in this meeting. He further says that Ram Lakhan gave him copy of leaflet Ex. P33 in the Parewajal meeting itself which seems to be unlikely. I have already in another part of the judgment said that this witness is not worthy of belief because he has stated that Ram Lakhan Singh went away from Parewajal on the day following the day of the meeting i.e. 18th June 1953.

44. The Kunwarpur Bazar meeting was scheduled to take place on 18th June 1953 and the petitioner has produced two witnesses P.W. 129, Bhawani Din and P.W. 130 Mathura to prove that this meeting took place on that day. Mool Chand P.W. 105 an alleged worker and convener of the meetings says that he did not attend any of the meetings mentioned in this leaflet. I am unable to believe that he was really a worker and signatory to Ex. P33. The other alleged signatory is Harnath Dixit P.W. 144. He states that he attended the Saraura meeting only. He does not give any particulars of the persons who spoke, at what time the meeting was held etc. In cross-examination he first said that Hanuman Prasad Misra addressed a meeting at Kunwarpur and he attended that meeting also. Later on in his cross-examination he said that Kunwarpur meeting was 12 or 13 days before polling but he did not attend it. He did not know about the Kunwarpur meeting. I am reluctant to accept the statements of these two alleged signatories and I hold that these two persons were not signatories to Ex. P33, were not workers of the Socialist party and had no interest in these meetings. My attention has not been drawn to any evidence about the holding of meetings at Mau and Nayagaon. I feel that all the five meetings as announced were not held and there is very meagre evidence of the meetings at Parewa Bazar, Kunwarpur Bazar and Saraura. In my judgment this apparently innocent document was brought into existence without the knowledge of the respondents and the only object was to show that Ram Lakhan Singh, a Government servant, was helping the respondents in their election propaganda. The petitioner knew that one such instance, if proved, will have the effect of setting aside the respondent's election. It may have a similar origin as Ex. P1 but there is no evidence about it and I will not base my judgment on mere suspicion. I hold, however, that the petitioner has failed to prove by satisfactory evidence that the respondents 1 and 5 got this leaflet Ex. P33 printed and distributed or that Ram Lakhan Singh was a signatory to this document or that Ram Lakhan Singh was a worker of the Socialist candidates. My finding is that respondents 1 and 5 did not obtain or procure in this election any assistance from Ram Lakhan Singh for the furtherance of the prospects of their election and they are not guilty of the corrupt practice as defined in Section 123(8) of the

Act and their election is not void under the provisions of Section 100(2) (b) of the Act. In view of my finding mentioned above it is not necessary to consider the provisions of Section 100(3) of the Act.

45. My learned colleagues have next dealt with the cases of Debi Prasad and Brij Mohan alleged to be Mukhyas or village headman serving under the Government of Uttar Pradesh whose assistance is alleged to have been obtained by the respondents No. 1 and 5 for the furtherance of the prospects of their election. The finding of my learned colleagues is that it has been proved that Debi Prasad or Brij Mohan Singh rendered any assistance in furtherance of the prospects of the election of the respondents No. 1 and 5. I agree with this finding.

46. The next case considered is that of Sri Ganga Shankar, Extra-Departmental Post master of village Bari. The finding of my learned colleagues regarding Ganga Shankar is that he worked as polling agent of Sri Hanuman Prasad Misra respondent No. 1 at Bari polling station and that he was an Extra-Departmental Branch Post master of Bari. My learned colleagues have not gone into the debated question whether Ganga Shankar should be deemed to be serving under the Government of India within the meaning of Sub-section (8) of Section 123 of the Representation of the People Act. They have, however, held that Ganga Shankar worked as polling agent. But in view of a decision of the Supreme Court in Civil Appeal No. 52 of 1954. *Sri Satyadeb Bushahri Versus Sri Padamdeb* and others, my learned colleagues have held that merely acting as polling agent is not giving assistance to the candidate in furtherance of the prospects of his election.

47. I do not wish to enter into detailed discussion whether an Extra-Departmental Post master is a Government servant. I am of the opinion that he is not a Government servant. The Government itself has described them as *agents* and their remuneration is described as *allowances*. I may refer to the Post & Telegraphs Manual, Volume IV, Establishments, 3rd Edition Published under the authority of the Director General of Post and Telegraphs, Chap. VIII, Page 92.

Employment of *Extra-Departmental Agents* 284—Whenever possible, branch offices should be placed in charge of extra-departmental agents such as school masters, station masters, shop-keepers, land-holders and pensioned servants of Government who have sources of income apart from their *allowances* for postal work. School masters station masters and others who are paid servants should not, however, be appointed as extra-departmental branch post masters without the previous consent of their official superiors or employees, as the case may be. A police officer who is not a pensioner may not be employed as an extra-departmental agent without the previous sanction of the Director General.

48. In view of this provision and in view of the fact that the Government itself treats such employees as agents, the matter should be beyond controversy, and I would hold that Ganga Shankar was not a Government servant.

49. I do not agree with my learned colleagues that Ganga Shankar worked as polling agent on the polling day at Bari. It is said that Ganga Shankar signed the polling agency form Ex. P34 on June 24, 1953 and this was presented before the Returning Officer. There is no evidence that he signed the polling agency form before the Presiding Officer except the statement of Abrarul Haq, P.W. 103. The polling agency form signed before the Presiding Officer is not before the Tribunal and reliance is placed by my learned colleagues on an alleged signature of Ganga Shankar in the diary maintained by the Presiding Officer at this polling station, but not relied on by the counsel of the petitioner.

50. The signatures of Ganga Shankar on the polling agency form Ex. P34 was sought to be proved by Abrarul Haq. The signatures of Ganga Shankar are in English and this witness does not seem to know English and he states in his statement, "I can read only the names in English; otherwise I cannot read English." He says further that he has seen Ganga Shankar signing as he is his friend also. He says that the signature on Ex. P34 "appeared to be his signatures although they were not made in his presence." This evidence is most unsatisfactory to prove the signatures of Ganga Shankar. Only Ex. P34 was placed before him and no other document to test his knowledge about Ganga Shankar's signature.

51. My attention has not been drawn to any Section in the Representation of the People Act or any rule made thereunder providing for maintenance of any diary. It may be that for their own convenience the Presiding Officers may have done so. I am, therefore, unable to give this document the same value that is given to public documents under the law. All that we find in the diary is that at

the very end the name of Ganga Shankar is written and after that the whole book is blank. The Presiding Officer has not been produced to prove this signature or to explain when and under what circumstances this very last entry in his diary came into existence. It appears from this document that other polling agents are alleged to have signed in the diary more than once. This is not so in the case of Ganga Shankar. It was the duty of the petitioner to prove this signature by Abrarul Haq and they cannot take shelter by saying that the diary was not before the Tribunal. It was before the Tribunal before the petitioner closed his case and he could have recalled this witness or produced some other witness to prove the signature.

52. The oral evidence about Ganga Shankar actually working as polling agent is very meagre, and unsatisfactory and I am unwilling to place reliance on such evidence and I hold that Ganga Shankar did not act as polling agent of the respondent No. 1 on the polling day at Bari.

53. I shall now deal with the allegation in the petition that Panches and Sarpanches of the Panchayati Adalats and certain other village officers worked and canvassed for the respondents 1 and 5 and some of them acted as polling agents also, in infringement of the prohibitory provisions of the Panchayat Raj Act (an enactment of the U.P. Legislature and rules framed thereunder) thereby committing an irregularity within the meaning of Section 100(2)(c) of the Representation of the People Act which materially affected the result of the election.

54. The finding of learned colleagues is that the result of the election has not been proved to have been materially affected by any of the irregularities mentioned in para. 12(i) to 12(vii) of the petition nor is the election of respondents No. 1 and 5 void on this ground. I agree with this finding, but I am unable to agree with my learned colleagues about their finding that rule 61-A of the Panchayat Raj Act is not *ultra vires*. For the purposes of this case the question whether Rule 61-A of the Panchayat Raj Act is *ultra vires* or not is of academic interest only and I shall not discuss this question in detail.

55. The Panchayat Raj Act, U.P. Act No. XXVI of 1947 came into force the same year. The object of the Act, as will appear from the preamble is to establish and develop Local Self Government in rural areas of the United Provinces and to make better provision for village administration and development. Chap. VI of the Act deals with the Panchayati Adalat and provides *inter alia* for the election of Panches and Sarpanches, their term of office and further provides for resignation by Panches, their removal from office, the constitution of the Panchayati Adalat for hearing cases etc. Section 49 of the said Act provides that the Sarpanch shall form a Bench of five Panches from the Panel. Sub-section (3) of that Section is as follows, "No Panch or Sarpanch shall take part in any case suit or proceeding to which he or any near relation, employer, employee or partner in business of his is a party or in which any of them may be personally interested". Sub-section (4) of that Section gives power to the State Government to prescribe rules for constitution of special benches in certain cases.

56. The rules made under the Panchayat Raj Act provide for resignation, suspension or removal of office bearers and members from Rule No. 59 onwards. Rule No. 61 is for removal of a member of a Panchayat or Panch or Sarpanch of a Panchayati Adalat in certain cases. It is after this rule and in this setting that Rule 61-A has been put in. But Rule 61-A is not consistent with and does not provide for removal or suspension of a Panch or Sarpanch if he acts in a particular way.

57. The rule making power has been given to the State Government under Section 110 of the Panchayat Raj Act and it must be consistent with the Act and should be framed to carry out the purposes of the Act. Section 110 of the Act gives power to the State Government to make rules of a procedural nature and not of a substantive nature and that power should also be exercised only to carry out the objects of the Act. The provisions of Rule 61-A are foreign to the Act and therefore, in my opinion, *ultra vires*. I shall quote below Rule 61-A of the Panchayat Raj Act which was enforced by a notification dated 15th December 1949. "61-A (1) If any Sarpanch or Panch of a Panchayati Adalat or his son or brother or any other close relation desires to stand for election to a local body other than a Gaon Panchayat or Panchayati Adalat or to the State Legislature from the area in which he exercises jurisdiction, the Sarpanch or Panch concerned shall inform the prescribed authority concerned of such intention. The prescribed authority shall immediately take steps to ensure that the Sarpanch or Panch does not take part in any bench for the disposal of cases or suits or proceedings of the area to which the election relates. No Sarpanch or Panch shall

take part in any election to a local body other than a Gaon Panchayat or Panchayati Adalat or to the State Legislature in any area within his jurisdiction otherwise than by casting his own vote as an elector.

58. (2) No Sarpanch or Panch of a Panchayati Adalat shall, in his official capacity, become a member of any organisation, association or institution not recognized by Government without the previous approval of the prescribed authority in writing."

59. Rule 61-A Sub-section (1) is really in two parts. The first portion says that if any Sarpanch or Panch of a Panchayati Adalat or his son or brother or any other close relation desires to stand for election..... he shall inform the prescribed authority of such intention. The prescribed authority shall take steps to ensure that the Panch or Sarpanch does not take part in any bench for the disposal of cases or suits or proceedings for the area to which the election relates. This portion of the rule allows panches or sarpanches to stand for election and work of their relation if they stand for election. If they do so they will not take part in certain cases and this rule comes within the provisions of Section 49(3) of the Act.

60. The next portion of the rule prohibits Panches and Sarpanches to take part in any election..... otherwise then by casting his vote as an elector. This takes away the right of every citizen to take part in election. If this rule had provided that if Panches or Sarpanches take part in any election they should not take part in cases before the Panchayati Adalat, it may be within the rule making power but to take away the rights of a citizen altogether is unreasonable and improper. A Panch or Sarpanch may stand for election, himself, help his son, brother or any close relation in an election with no other consequence than that he should not take part in any bench for disposal of cases, but if it is the case of a friend for whom he works in an election he is debarred. This is unreasonable and not within the rule making power of the Government.

61. It has been argued that this rule was framed in 1949 and by Article 372 of the Constitution this rule is still in force; but if this rule is *ultra vires* it cannot continue in force. It has been argued that when the Panchayat Raj Act was passed the Government of India Act 1935 was in force and that Act empowered the then Provincial Legislature to enact about elections, but no such Act has been passed. In fact, in 1951 the Parliament passed a comprehensive and consolidated Act providing for conduct of elections, qualifications and disqualifications for membership etc. This Act was passed after Rule 61A of the Panchayat Raj Act was enforced and if Parliament thought that it will be a disqualification for a Panch or Sarpanch to take part in an election to State Legislature or Houses of Parliament, it would have been provided in the Representation of the People Act; but it has not been done.

62. I am, therefore, of the opinion that Rule 61A of the Panchayat Raj Act is *ultra vires*.

63. *Issue No. 10.*—This relates to return of Election Expenses made by respondents 1 and 5. I beg to differ from my learned colleagues regarding their finding about item No. (c) viz. that respondents No. 1 and 5 deliberately excluded the costs of printing leaflet Ex. P33 from their Return of Election Expenses. I have already discussed and given my reason why I hold that respondents No. 1 and 5 did not get this leaflet Ex. P33 printed or distributed. There is no evidence that these leaflets were printed with the sanction or connivance of respondents No. 1 and 5. The petitioner's evidence regarding distribution is confined to Parewa Bazar and Kunwarpur bazar on the days of the alleged meetings only which is unlikely. The evidence is very meagre and unsatisfactory. The document was apparently innocent and did not attract the notice of respondents. It was of a trivial nature and did not affect at all the result of the election. I would, therefore, hold that the minor corrupt practice under Section 123(8) was not committed by respondents No. 1 and 5 and considering the entire circumstances of this case the non-inclusion of the expenses of the cost of printing leaflet Ex. P33 does not make the Return of Election Expenses false in any material particular and it does not entail a disqualification under Section 140(1) (a) of the Act.

64. *Issue No. 12.*—For the reasons given in my judgment, I am of the opinion that the petitioner has failed to prove that the respondents No. 1 and 5 or their agents or workers committed any of the corrupt or illegal practices or that any irregularities were committed as alleged in the petition and I decide all the issues against the petitioner and would dismiss his petition with costs which I assess at Rs. 500 only.

(Sd.) A. SANYAL, Advocate Member,

The 27th September, 1954.

ORDER BY THE TRIBUNAL

There is a difference of opinion among the Members as to the final order to be passed in this case. The Chairman and the Judicial Member are of the opinion that the respondents No. 1 and 5 have been proved to have committed the major corrupt practices defined in Section 123(5) and (8) of the Representation of the People Act, 1951 and the minor corrupt practice defined in Section 124(4) of the Act and no other corrupt or illegal practice and no irregularity materially affecting the result of the election has been proved, whereas the Advocate Member is of the opinion that the commission of no corrupt or illegal practice or irregularity has been proved at all in this case. Under Section 104 of the Act the case is to be decided according to the view of the majority and it is, therefore, held that the respondents No. 1 and 5 have committed the major corrupt practices defined in Section 123(5) and (8) of the Act and the minor corrupt practice defined in Section 124(4) of the Act. Because of the commission of these two major corrupt practices the election of the respondents No. 1 and 5 is declared to be void; also the commission of these two major corrupt practices and the one minor corrupt practice entails a disqualification in respect of the respondents No. 1 and 5 under Section 140 of the Act. The parties shall bear their own costs of the case.

(Sd.) R. SARAN, *Chairman.*

(Sd.) A. SANYAL, *Advocate Member.*

(Sd.) M. U. FARUQI, *Judicial Member.*

The 27th September 1954.

[No. 82/25/53/17588.]

By Order,

K. S. RAJAGOPALAN, *Asst. Secy.*